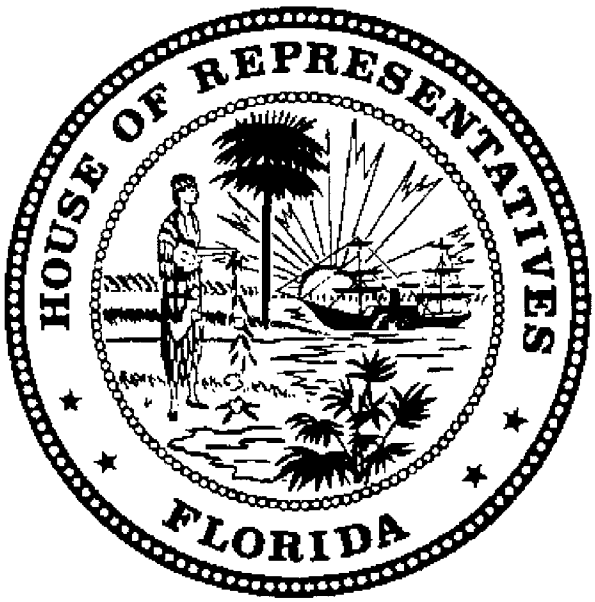

State Resources Council

Wednesday, April 19, 2006
8:30 AM
Reed Hall

Allan G. Bense
Speaker

Marty Bowen
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Resources Council

Start Date and Time:	Wednesday, April 19, 2006 08:30 am
End Date and Time:	Wednesday, April 19, 2006 10:30 am
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 743 CS Agricultural Usage Sales and Use Tax Exemptions by Bowen
HB 749 CS Sewage Treatment and Disposal Systems by Bowen
HB 1063 CS Regulation of Wells by Stansel
HB 1345 CS Saltwater Fisheries by Littlefield
HB 1533 Petroleum Contamination by Sands
HB 1557 CS Wekiva Onsite Sewage Treatment and Disposal System Compliance Grant Program by Brummer
HB 7133 CS Environmental Protection by Environmental Regulation Committee
HB 7159 CS Agriculture by Agriculture Committee
HB 7163 CS Environmental Permitting by Environmental Regulation Committee

NOTICE FINALIZED on 04/17/2006 16:05 by REARDON.BILLIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 CS Agricultural Usage Sales and Use Tax Exemptions
SPONSOR(S): Bowen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	10 Y, 0 N, w/CS	Kaiser	Reese
2) Finance & Tax Committee	6 Y, 0 N	Noriega	Diez-Arguelles
3) Fiscal Council	13 Y, 0 N	Noriega	Kelly
4) State Resources Council		Kaiser	Hamby
5)			

SUMMARY ANALYSIS

This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered.

The bill expands the sales tax exemption for diesel fuel. The exemption applies when the diesel fuel is used in any tractor, vehicle, or other equipment that is used exclusively on a farm or for processing farm products on the farm. The exemption does not apply to diesel fuel used in any licensed motor vehicle operated on the public highways in the state.

The Revenue Estimating Conference estimates that the provisions of this bill will result in a negative fiscal impact of $1.8 million to state government and $0.5 million to local governments in FY 2006-07, and of $2.8 million to state government and $0.7 million to local governments in FY 2007-08.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, and provides that farmers may use tax exempt diesel fuel in equipment other than farm vehicles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.0501, F.S., imposes a 6 percent sales tax on the total cost price of diesel fuel purchased for consumption, use, or storage by a trade or business. Section 212.0501(3), F.S., provides an exemption for diesel fuel used for residential purposes or on account of agricultural purposes as defined in s. 212.08(5), F.S., or when purchased or stored for resale. This exemption does not cover diesel fuel used in farm equipment or on a farm to process or produce farm products.

Section 212.0501(5), F.S., provides a sales tax exemption for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.

According to the U.S. Department of Agriculture (USDA), the overall fuel bills for farmers increased by 47 percent between 2003 and 2005. The USDA projects that farmers' energy bills will increase by another $1.7 billion in 2006.[1] The following table reflects the exemption status of electricity for neighboring states in the southern United States:

State	Full Exemption	Partial Exemption
Louisiana	X	
South Carolina	X	
Tennessee	X*	
Georgia	X**	
Alabama	X***	
Mississippi		X****

*Effective 2007
**Irrigation systems only
***Heating poultry houses
****1.5 percent

Proposed Changes

This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, which means that it is taxable.

The bill expands the sales tax exemption for diesel fuel. The exemption applies when the diesel fuel is used in any tractor, vehicle, or other equipment that is used exclusively on a farm or for processing farm products on the farm. The exemption does not apply to diesel fuel used in any licensed motor vehicle operated on the public highways in the state.

[1] www.tdo.com, Friday, February 24, 2006, "As energy bills climb, farmers' profits falter," by Pamela Brogan.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.0501(3), F.S., by expanding the meaning of diesel fuel exempt from sales tax.

Section 2. Amends s. 212.08(5)(e), F.S., by providing an exemption for electricity used directly and exclusively for production or processing of agricultural products on a farm, as long as it is separately metered.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	(1.8m)	(2.8m)
State Trust	(Insignificant)	(Insignificant)
Total	(1.8m)	(2.8m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	(0.1m)	(0.1m)
Local Gov't. Half Cent	(0.2m)	(0.3m)
Local Option	(0.2m)	(0.3m)
Total Local Impact	(0.5m)	(0.7m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural producers will save money by not having to pay a sales tax on electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Agriculture Committee adopted one amendment to the bill. This amendment clarified that the sales tax exemption only applies to electricity used directly and exclusively for the production or processing of agricultural products on a farm.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendment adopted by the Agriculture Committee.

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agricultural usage sales and use tax exemptions; amending s. 212.0501, F.S.; excluding from application of the sales and use tax diesel fuel used in certain farming vehicles or for certain farming purposes; amending s. 212.08, F.S.; exempting from the sales and use tax electricity used for specified agricultural purposes; providing application; providing a conclusive presumption of taxable use under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.--

(3) For purposes of this section, "consumption, use, or storage by a trade or business" does not include those uses of

diesel fuel specifically exempt on account of residential purposes, or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state ~~on account of agricultural purposes as defined in s. 212.08(5)~~, or the purchase or storage of diesel fuel held for resale.

Section 2. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(e)1. Gas used for certain agricultural purposes.--Butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

2. Electricity used for certain agricultural purposes.--Electricity used directly and exclusively for production or processing of agricultural products on a farm is exempt from the tax imposed by this chapter. This exemption applies only if the electricity used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, and all of the electricity used for such purposes is taxable.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 749 CS Sewage Treatment and Disposal Systems
SPONSOR(S): Bowen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1874

REFERENCE / DIRECTOR	ACTION	ANALYST	STAFF
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Kliner	Kliner
2) Local Government Council	8 Y, 0 N, w/CS	Camechis	Hamby
3) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Dixon	Dixon
4) State Resources Council		Kliner	Hamby
5)			

SUMMARY ANALYSIS

Florida's Department of Health (DOH) regulates the public health of public water systems and onsite sewage treatment systems. Current law provides for onsite sewage treatment permitting for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems in areas where publicly-owned or investor-owned sewerage systems are not available. When a central sewerage system is available, however, local governments may require connection of onsite systems to the central system within 365 days of the central system's availability.

This bill requires counties, municipalities, and sewer districts proposing to expand or build new central sewer facilities to provide information regarding:

- The history of onsite sewage treatment and disposal systems currently in use in the area;
- A comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment system that is approved by the DOH and that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority.

In addition, the bill allows local governments to meet growth management concurrency requirements for "sanitary sewers" for new development through the use of any onsite treatment and disposal systems approved by the DOH.

The bill authorizes a local government to grant a variance to an owner of a performance-based onsite sewage treatment and disposal system permitted by the department as long as the onsite system is functioning properly and satisfying the conditions of the operating permit; however, the bill explicitly provides that a local government is not required to issue a variance under any circumstance. The bill also clarifies that a local government located within an area of critical state concern or located in an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation is not required to issue a variance under any circumstance, and nothing in this provision should be construed as limiting local government authority to enact ordinances under section 4 of ch. 99-395, Laws of Florida. It also clarifies the enforcement authority of the DOH when an onsite system has failed. Further, it increases the continuing education hours for septic tank contractors from 6 to 12.

This bill does not appear to have a fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited government: The bill may increase workload of county, municipality, and sewer districts due to a new requirement to include certain information in reports regarding creation or expansion of central sewerage systems.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background – The Federal Clean Water Act and Wastewater Discharge
The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA)[1], established the basic framework for pollution control in the nation's water bodies. Its primary goal was to maintain clean and useful water bodies. By setting national standards and regulations for the discharge of pollution, the CWA was intended to restore and protect the health of the nation's water bodies.

The CWA established the foundation for wastewater discharge control in the United States. According to the Environmental Protection Agency (EPA), the CWA's primary objective is to "restore and maintain the chemical, physical and biological integrity of the nation's waters."[2] The CWA established a control program for ensuring that communities have clean water by regulating the release of contaminants into our country's waterways. Permits that limit the amount of pollutants discharged are required of all municipal and industrial wastewater dischargers under the National Pollutant Discharge Elimination System (NPDES) permit program. In addition, a construction grants program was set up to assist publicly owned wastewater treatment works build the improvements required to meet these new limits.

According to the EPA, over 75 percent of the nation's population is served by centralized wastewater collection and treatment systems. The remaining population uses septic or other onsite systems. Approximately 16,000 municipal wastewater treatment facilities are in operation nationwide. The CWA requires that municipal wastewater treatment plant discharges meet a minimum of 'secondary treatment'. Over 30 percent of the wastewater treatment facilities today produce cleaner discharges by providing even greater levels of treatment than secondary.

State Regulation for Sewage Systems
Statutory regulation of Florida county water and sewerage systems is found in ch. 153, F.S., which authorizes local governments to:

- Construct water supply systems and sewage disposal systems;
- Operate, manage, control, and make improvements to the systems;
- Issue bonds to pay for the costs associated with the construction of the systems; and
- Levy rates and fees to pay for the management of the systems.

[1] Public Law 92-500
[2] http://www.epa.gov/owm/primer.pdf

Chapter 180, F.S., authorizes municipalities to provide similar services. The construction and expansion of central sewerage systems are typically financed through bonds that are issued based on a guarantee of a given capacity over time. Knowing how many citizens may connect to a central system allows local governments to predict revenue which, in turn, assists local governments in securing funding from lending institutions for sewerage projects.

Part II of ch. 153, F.S., authorizes the creation of county water and sewer districts, which are special taxing districts created to reach and provide services to unincorporated areas in need of sewer and water services.

Chapter 381, F.S., authorizes the Florida Department of Health to regulate public water systems and onsite sewage treatment systems. Section 381.0065, F.S., regulates onsite sewage treatment and disposal systems, and requires a permit for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems in areas where publicly-owned or investor-owned sewerage systems are not available. Pursuant to s. 381.00655, F.S., if a publicly owned or investor-owned system is available, however, the owner of the central system may require connection of onsite systems to central sewerage systems within 365 days of the central system's availability.

To ensure that certain types of public facilities and services (e.g., sewer, water, and roads) needed to serve residents are constructed and made available contemporaneously with the impact of new development, lawmakers directed local governments to incorporate the concept of concurrency in the 1980s.[3]

Growth and Concurrency Obligations

A centerpiece of Florida's 1985 growth management legislation was concurrency.[4] At its core, concurrency is a requirement that development must not proceed unless infrastructure capacity and specific urban services are in place to service the new development. Concurrency was intended to address major infrastructure problems facing the state, especially increasing road congestion. As the state added approximately 300,000 residents each year during the 1970s and into the 1980s, a trend that has continued almost unabated for the last forty years, local and state road infrastructure became increasingly plagued by traffic congestion. In addition, other problems were apparent as well, including potable water availability, the need to treat wastewater to meet higher federal standards, and increasing problems relating to inadequate stormwater management.[5] Section 163.3180, F.S., mandates that sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation facilities, including mass transit, are subject to the concurrency requirement on a statewide basis.[6]

Central Wastewater Collection and Treatment[7]

The most common form of pollution control in the United States consists of a system of sewers and wastewater treatment plants. The sewers collect municipal wastewater from homes, businesses, and industries and deliver it to facilities for treatment before it is discharged to water bodies or land, or reused. Conventional wastewater collection systems transport sewage from homes or other sources by gravity flow through buried piping systems to a central treatment facility. These systems are usually reliable and consume no power. However, the slope requirements to maintain adequate flow by gravity may require deep excavations in hilly or flat terrain, as well as the addition of sewage pump stations,

[3] Back to Basics on School Concurrency, David M. Powell, © 1999 Florida State University Law Review

[4] Florida Growth Management Act (Florida Statutes Chapter 163, Part II, 1985)

[5] A Review of Local Government Concurrency Practices in Florida, Dr. Timothy S. Chapin, Department of Urban and Regional Planning, Florida State University, Working Paper prepared for the DeVoe L. Moore Center, August, 2005

[6] Chapter 9J-5.0055, Florida Administrative Code provides more specific guidance to local governments as the state concurrency mandate is translated into local policies and procedures.

[7] EPA primer on municipal systems at http://www.epa.gov/owm/primer.pdf

which can significantly increase the cost of conventional collection systems. Manholes and other sewer appurtenances also add substantial costs to conventional collection systems.

Cities began to install wastewater collection systems in the late nineteenth century because of an increasing awareness of waterborne disease and the popularity of indoor plumbing and flush toilets. In the year 2000, approximately 208 million people in the U.S. were served by centralized collection.

Central wastewater treatment facilities utilize multiple treatment processes in order to address the multifaceted difficulties associated with certain waste types, including:

- The effects of biochemical oxygen demand, or BOD;
- Removal of pathogens;
- Processing of nutrient matter; and
- Removal and treatment of detergents, household cleaning aids, heavy metals, pharmaceuticals, synthetic organic pesticides and herbicides, industrial chemicals, and the wastes from their manufacture.

Preliminary Treatment

Preliminary treatment typically involves use of a screen to remove large floating objects, such as rags, cans, bottles and sticks that may clog pumps, small pipes, and down stream processes. The screens vary from coarse to fine and are constructed with parallel steel or iron bars with openings of about half an inch, while others may be made from mesh screens with much smaller openings. Some plants use devices known as comminutors or barminutors, which combine the functions of a screen and a grinder. These devices catch and then cut or shred the heavy solid and floating material.

Secondary Treatment

After the wastewater has been through Primary Treatment processes, it flows into the next stage of treatment called secondary. Secondary treatment processes can remove up to 90 percent of the organic matter in wastewater by using biological treatment processes. The "attached growth" process includes using trickling filters units, biotowers, and rotating biological contactors. Attached growth processes are effective at removing biodegradable organic material from the wastewater. In "suspended growth" processes, the microbial growth is suspended in an aerated water mixture where the air is pumped in, or the water is agitated sufficiently to allow oxygen transfer. The use of lagoons and transfers to land are also utilized if appropriate to the system process.

On-site Systems

Generally, septic systems are used to treat and dispose of relatively small volumes of wastewater, usually from houses and businesses that are located relatively close together. Septic systems are also called onsite wastewater treatment systems, decentralized wastewater treatment systems, on-lot systems, individual sewage disposal systems, cluster systems, package plants, and private sewage systems. Systems are considered "decentralized" because they do not involve central wastewater collection and treatment.

According to the EPA, the typical septic treatment system includes a septic tank, which digests organic matter and separates matter that floats (e.g., oils and grease) and settling solids from the wastewater. Soil-based systems discharge the liquid (effluent) from the septic tank into a series of perforated pipes buried in a leach field, leaching chambers, or other special units designed to slowly release the effluent into the soil or surface water, sometimes referred to as a drainage field.

Alternative systems use pumps or gravity to help septic tank effluent trickle through sand, organic matter (e.g., peat, sawdust), constructed wetlands, or other media to remove or neutralize pollutants like disease-causing pathogens, nitrogen, phosphorus, and other contaminants. Some alternative systems are designed to evaporate wastewater or disinfect it before it is discharged to the soil or surface waters.[8] The EPA developed guidelines to assist communities in establishing comprehensive management programs for onsite/decentralized wastewater systems to improve water quality and protect public health. The voluntary guidelines address the sensitivity of the environment in the community and the complexity of the system used. The five model management programs are:

- System inventory and awareness of maintenance needs.
- Management through maintenance contracts.
- Management through operating permits.
- Utility operation and maintenance.
- Utility ownership and management.[9]

According to the U.S. Census Bureau, approximately 26 million homes (one-fourth of all homes) in America are served by decentralized wastewater treatment systems. The Census Bureau reports that the distribution and density of septic systems vary widely by region and state, from a high of about 55 percent in Vermont to a low of around 10 percent in California. The New England states have the highest proportion of homes served by septic systems: New Hampshire and Maine both report that about one-half of all homes are served by individual systems. More than one-third of the homes in the southeastern states depend on these systems, including approximately 48 percent in North Carolina and about 40 percent in both Kentucky and South Carolina. More than 60 million people in the nation are served by septic systems. About one-third of all new development is served by septic or other decentralized treatment systems.[10] According to the Florida Department of Health, 31 percent of the Florida population is served by an estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment.[11]

In Florida, the effect of waste disposal, whether through an on-site system or a centralized system, will implicate laws relating to the Total Maximum Daily Load Program (TMDL), which describes the amount of each pollutant a water body can receive without violating state water quality standards.

TMDL Program

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the states until numerous lawsuits were filed by environmental groups.[12]

Currently, DEP develops and implements TMDLs through a watershed-based management approach that addresses the state's 52 major hydrologic basins into five groups. Each basin group is subject to a five phase TMDL cycle on a rotating basis. Phase 1 is a preliminary evaluation of the quality of a water body, phase two is monitoring and assessing to verify water quality impairments, phase 3 is the

[8] http://cfpub2.epa.gov/owm/septic/home.cfm - Frequently Asked Questions
[9] http://www.epa.gov/owm/septic/pubs/septic_guidelines_factsheet.pdf
[10] http://cfpub2.epa.gov/owm/septic/faqs.cfm?program_id=70#358
[11] http://www.doh.state.fl.us/environment/ostds/intro.htm
[12] Florida implements the TMDL program in s. 403.067, F.S.

development and adoption of TMDLs for waters verified as impaired, phase 4 is the development of basin management action plans to achieve the TMDL, and phase 5 is the implementation of the plan and monitoring of results.

In the 2005 Regular Session, the TMDL program was amended to authorize DEP to develop basin management action plans (BMAP) as part of the development and implementation of a TMDL for a water body. The law requires plans to integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL, restore designated uses of the water body, provide for phased implementation of strategies, establish a schedule for implementing strategies, establish a basis for evaluating the plan's effectiveness, identify feasible funding strategies, and equitably allocate pollutant reductions to basins as a whole or to each point or non-point source. The bill provides that plans may provide pollutant load reduction credits to pollution dischargers that have implemented strategies to reduce pollutant loads.[13]

The law creates incentives to participate in the BMAP process and establishes a more direct linkage between the actions specified in the BMAP and activities regulated by DEP. Consistent with the existing provisions in s. 403.067, F. S., non-point sources are still managed through a non-regulatory, incentive-based program. However, in order to promote the same predictable pollution reduction performance among non-regulated entities as exists for permitted entities, the law provides the following:

- Non-regulated activities are not eligible for the incentives associated with the presumption of compliance with state water quality standards and the waiver of liability for pollution if adopted best management practices are not properly and timely implemented.
- Non-regulated activities that choose not to implement adopted best management practices must demonstrate compliance with applicable water quality standards.
- DEP is authorized to take enforcement actions where a party fails to properly implement best management practices or provide data demonstrating compliance with water quality standards.

Effect of Proposed Changes

The bill requires counties, municipalities, and sewer districts that propose to expand or build new central sewer facilities to provide information in a report, including:

- Available information from the Department of Health (DOH) on the history of onsite sewage treatment and disposal systems currently in use in the area; and
- A comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating and properly maintaining an onsite sewage treatment system, approved by the DOH that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority.

In addition, the bill allows local governments to meet growth management concurrency requirements for "sanitary sewers" for new development through the use of any onsite treatment and disposal systems approved by the DOH.

The bill authorizes a local government to grant a variance to an owner of a performance-based onsite sewage treatment and disposal system permitted by the DOH as long as the onsite system is functioning properly and satisfying the conditions of the operating permit; however, the bill explicitly provides that a local government is not required to issue a variance under any circumstance. The bill also clarifies that a local government located within an area of critical state concern or located in an area that was

[13] House of Representatives State Resources Council Staff Analysis for CS/HB 1839, 2005 Regular Session

designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation is not required to issue a variance under any circumstance, and nothing in this provision should be construed as limiting local government authority to enact ordinances under s. 4 of ch. 99-395, L.O.F. It also clarifies the enforcement authority of the DOH when an onsite system has failed. Further, it increases the continuing education hours for septic tank contractors from 6 to 12.

C. SECTION DIRECTORY:

Section 1. Amends s. 153.54, F.S., to require county to include certain information in reports.

Section 2. Amends s. 153.73, F.S., to require sewer districts to include certain information in reports.

Section 3. Amends s. 163.3180, F.S., to allow local governments to meet growth management concurrency requirements for "sanitary sewers" for new development with any DOH-approved onsite systems.

Section 4. Amends s. 180.03, F.S., to require municipalities to include certain information in reports.

Section 5. Amends s. 381.00655, F.S., to allow local governments to grant variances.

Section 6. Amends s. 318.0067, F.S., to clarify the enforcement authority of the department.

Section 7. Amends s.489.554, F.S., to increase continuing education hours.

Section 8. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Indeterminate and dependent upon whether a local government grants a variance from requirement to connect to central sewerage systems.

2. Expenditures: Indeterminate as to scope. The bill may increase workload and costs of county, municipality, and sewer districts due to the requirement to include certain information in reports.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: This bill may benefit certain private sector owners of onsite sewerage systems that do not wish to connect to central sewerage treatment systems if a local government grants a variance.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision may apply because the bill requires counties and cities to provide certain information in reports prior to construction of a proposed sewerage system or the extension of an existing sewerage system that was not previously approved or not in a designated urban service area. Collecting such information may require the expenditure of funds. However, the bill may be exempt from the mandate requirements if the fiscal impact of the bill, on an aggregate basis for all cities and counties in the state, is less than $1.9 million over the long term. At this time, the fiscal impact of the bill is unknown.

If the bill is not exempt from the mandates requirements imposed by Art. VII, section 18 of the Florida Constitution, the Legislature must determine that the law fulfills an important state interest and the bill must be approved by two–thirds of the House and Senate membership.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, the Committee on Environmental Regulation approved one amendment offered by the bill's sponsor. First, the amendment revises the requirements for the feasibility study. Local governmental units are still required to perform a feasibility study so long as the proposed sewerage system was not one previously approved for construction or expansion or is not in a designated urban service area. The details of the study were clarified to include:

- The age, condition, maintenance history of the onsite system being reviewed.
- A fiscal evaluation comparing connection to the central system as opposed to installation and operation of an onsite system that provides a comparable level of environmental and health protection as the central system.
- An evaluation to determine whether the density required accommodating the onsite system would meet the local government's comprehensive plan for density in the area and environmental protection of the local government's surface groundwater.
- Consideration of the local government's obligations for water body cleanup and protection under state or federal programs.

The amendment limits the "opt out" provision to an owner of a performance-based onsite sewage treatment and disposal system that is permitted by the department and which provides for treatment

meeting advanced secondary treatment standards. Such an owner shall not be required to connect to a publicly owned or investor-owned sewerage system as long as the onsite system is functioning properly and satisfying the conditions of the operating permit.

The amendment further limits the exemptions to the mandatory connection law in Florida by limiting the situations when a homeowner is not required to hook up to a central system, to wit:

- No exemption where area is subject to existing bond requirements or other financial commitments.
- No exemption when an area is subject to state or federal requirement or court order requiring hookup.
- No exemption in Monroe County or any municipality located therein.
- No exemption in an area located within a basin containing a water body listed pursuant to the federal clean water act.
- No exemption in an area that is designated in a local comprehensive plan as an urban service area.

On March 29, 2006, the Local Government Council adopted a strike-all amendment to the bill that removed the requirement for detailed feasibility studies and required inclusion of certain information in reports by cities, counties, and sewer districts. The bill also deleted the "opt-out" provision for property owners and authorized local governments to grant a variance to an owner of certain sewage treatment systems from requirements to connect to central systems. The amendment specifically provided that local governments, including those within areas of critical state concern, are not required to issue such variances under any circumstance.

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted an amendment to the bill that clarified the enforcement authority of the Department of Health when an onsite system has failed. It also increased the number of hours required for continuing education for septic tank contractors from 6 to 12.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to sewage treatment and disposal systems; amending s. 153.54, F.S.; requiring county commissions to include certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system in certain reports; amending s. 153.73, F.S.; requiring county water and sewer districts to conduct certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system prior to the levying of certain assessments; amending s. 163.3180, F.S.; authorizing local governments to use certain onsite sewage treatment and disposal systems to meet certain concurrency requirements; amending s. 180.03, F.S.; requiring municipalities to conduct certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system prior to the adoption of certain resolutions or ordinances; amending s. 381.00655, F.S.;

authorizing local governments to grant variances from connecting to a publicly owned or investor-owned sewerage system under certain circumstances; providing construction; amending s. 381.0067, F.S.; authorizing the Department of Health or it agents to require repair or replacement of drainage fields under certain circumstances; requiring the department or its agents to issue an order for the replacement of an onsite sewage treatment and disposal system under certain circumstances; providing construction; amending s. 489.554, F.S.; increasing annual continuing education requirements for septic tank contractors and master septic tank contractors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 153.54, Florida Statutes, to read:

153.54 Preliminary report by county commissioners with respect to creation of proposed district.--Upon receipt of a petition duly signed by not less than 25 qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer system or

both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters, shall include at least the following:

(5) For the construction of a new proposed sewerage system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Health on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment system that is approved by the Department of Health and that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

Section 2. Paragraph (c) is added to subsection (2) of section 153.73, Florida Statutes, to read:

153.73 Assessable improvements; levy and payment of special assessments.--Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments

upon benefited property for the payment thereof, under the provisions of this section.

(2)

(c) For the construction of a new proposed sewerage system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Health on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment system that is approved by the Department of Health and that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority.

Section 3. Paragraph (a) of subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.--

(2)(a) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no

later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Health to serve new development.

Section 4. Subsection (3) is added to section 180.03, Florida Statutes, to read:

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.--

(3) For the construction of a new proposed sewerage system or the extension of an existing sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Health on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment system that is approved by the Department of Health and that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority. The results of such a study shall be included in the resolution or ordinance required under subsection (1).

Section 5. Paragraph (c) is added to subsection (2) of section 381.00655, Florida Statutes, to read:

381.00655 Connection of existing onsite sewage treatment and disposal systems to central sewerage system; requirements.--

(2) The provisions of subsection (1) or any other provision of law to the contrary notwithstanding:

(c) A local government may grant a variance to an owner of a performance-based onsite sewage treatment and disposal system permitted by the department as long as the onsite system is functioning properly and satisfying the conditions of the operating permit. Nothing in this paragraph shall be construed to require a local government to issue a variance under any circumstance. A local government located within an area of critical state concern or located in an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation shall not be required to issue a variance under any circumstance, and nothing in this paragraph shall be construed as limiting local government authority to enact ordinances under s. 4 of chapter 99-395, Laws of Florida.

Section 6. Section 381.0067, Florida Statutes, is amended to read:

381.0067 Corrective orders; private and certain public water systems and onsite sewage treatment and disposal systems.--When the department or its agents, through investigation, find that any private water system, public water system not covered or included in the Florida Safe Drinking Water Act (part VI of chapter 403) or onsite sewage treatment and disposal system constitutes a nuisance or menace to the public health, the department or its agents ~~it~~ may issue an

order requiring the owner to correct the improper condition. If the improper condition relates to the drainage field of an onsite sewage treatment and disposal system, the department or its agents may issue an order requiring the owner to repair or replace the drainage field. If an onsite sewage treatment and disposal system has failed, the department or its agents shall issue an order requiring the owner to replace the system. For purposes of this section, an onsite sewage treatment and disposal system has failed if the operation of the system constitutes a nuisance or menace to the public health and the system cannot be repaired.

Section 7. Subsection (2) of section 489.554, Florida Statutes, is amended to read:

489.554 Registration renewal.--

(2) At a minimum, annual renewal shall include continuing education requirements of not less than 12 ~~6~~ classroom hours annually for septic tank contractors and not less than 18 ~~12~~ classroom hours annually for master septic tank contractors. The 18 ~~12~~ classroom hours of continuing education required for master septic tank contractors may include the 12 ~~6~~ classroom hours required for septic tank contractors, but at a minimum must include 6 classroom hours of approved master septic tank contractor coursework.

Section 8. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 749 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Bowen offered the following:

Amendment

On lines 67, 94, & 129, after system insert:

; consideration of the local government's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 749 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Bowen offered the following:

Amendment

On line 152, after the period, insert:

A local government located in any of the following areas shall not be required to issue a variance under any circumstance:

1. An area of critical state concern.

2. An area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation.

3. An area in the South Florida Water Management district west C-11 basin that discharges through the S-9 pump into the Everglades.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 749 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Bowen offered the following:

Amendment

Remove lines 162-173 and insert:

public health, or significantly degrades the groundwater or surface water, the department or its agents ~~it~~ may issue an order requiring the owner to correct the improper condition. If the improper condition relates to the drainage field of an onsite sewage treatment and disposal system, the department or its agents may issue an order requiring the owner to repair or replace the drainage field. If an onsite sewage treatment and disposal system has failed, the department or its agents shall issue an order requiring the owner to replace the system. For purposes of this section, an onsite sewage treatment and disposal system has failed if the operation of the system constitutes a nuisance or menace to the public health, or significantly degrades the groundwater or surface water, and the system cannot be repaired.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 CS Regulation of Wells
SPONSOR(S): Stansel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	8 Y, 0 N	Lotspeich	Lotspeich
2) Military & Veteran Affairs Committee	7 Y, 0 N, w/CS	Marino	Cutchins
3) Agriculture & Environment Appropriations Committee	11 Y, 0 N, w/CS	Dixon	Dixon
4) State Resources Council		Lotspeich	Hamby
5)			

SUMMARY ANALYSIS

Committee Substitute for House Bill 1063 addresses several issues relating to water well contractors. Specifically, the committee substitute:

- Amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a facilitator when dealing with other appropriately licensed contractors for the electrical, fencing, construction of a pump house or vault, and landscaping work that is necessary to complete construction, repair, or abandonment of certain water wells.
- Amends the license renewal provisions of s. 373.324, F.S., to require that the continuing education requirements for a license renewal be waived if the contractor has obtained his first license within 180 days before the end of the biennial licensing cycle. It further creates a fee structure for the continuing education requirements for license renewal and allows the delegation of responsibilities for such requirements to the water management districts or for contracting the responsibilities to a private entity.
- Provides that a servicemember or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted a 180-day extension upon return from those same orders to meet the license renewal requirements without penalty.
- Imposes a fine up to $5,000 on persons who drill water wells without a license.

The committee substitute does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This committee substitute allows certain well water contractor licensees to avoid paying late fees and penalties associated with license renewal under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Law

Water Well Contractor License

Part III of Chapter 373, F.S., currently regulates the construction, repair, and abandonment of water wells. Pursuant to s. 373.302, F.S., the Legislature has found that "the practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment." Accordingly, s. 373.306, F.S., prohibits the construction, repair or abandonment of water wells that are inconsistent with Part III of Chapter 373, F.S.

A permit is required for the construction, repair, or abandonment of any water well.[1] In addition, anyone who wants to engage in business as a water well contractor must be licensed by the water management district. The licensure requirements for water well contractors are set forth in s. 373.323, F.S. In addition, the Department of Environmental Protection (DEP) has adopted rules that set forth the requirements for water well contractor licensure.[2] An applicant for a water well contractor license must submit an application to the water management district. The applicant must be at least 18 years of age and have a minimum of two years experience in the construction, repair, and abandonment of water wells.[3] The applicant is required to take and pass an examination that has been prepared by the DEP. The examination is required to test: (1) the applicant's knowledge of rules and regulations of Part III of Chapter 373, F.S., (2) the applicant's ability to construct, repair, and abandon water wells, and (3) the applicant's ability to supervise, direct, manage, and control the contracting activities of a water well contracting business.[4] The water management district is required to issue a water well contractor license to any qualified applicant who passes the examination, pays the required application fee, and who completes at least 12 hours of approved course work.[5]

Renewals

Section 373.324, F.S., addresses issues relating to the renewal of water well contractor licenses. The DEP has adopted rules establishing a procedure for the biennial review of all licenses, and each water management district has incorporated the DEP rules by reference.[6] The renewal requires the submittal of an application for renewal and proof of the completion of 12 classroom hours of continuing education during the biennial cycle. Any license not renewed at the end of the biennial cycle automatically reverts to an inactive status. Such inactive licenses can be reactivated only by meeting the requirements of s. 373.325, F.S., which require the payment of renewal and penalty fees. A license that has been inactive for more than one year can be reactivated only by applying for licensure under the provisions of s. 373.323, F.S.

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[1] s. 373.313, F.S.
[2] Rule 62-531, Florida Administrative Code
[3] s. 373.323(3), F.S.
[4] s. 373.323(4), F.S.
[5] s. 373.323(5), F.S.
[6] Rule 62-531.330, Florida Administrative Code

Penalties
Under s. 373.336, F.S., it is unlawful for any person to practice water well contracting without an active license. Any person found to be in violation of this provision is guilty of a misdemeanor of the second degree punishable as provided in s. 775.082 or s. 775.083, F.S.

Effect of Proposed Changes

Water Well Contractor
Committee Substitute for House Bill 1063 amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a facilitator when dealing with other appropriately licensed contractors for additional incidental work, such as electrical, fencing, construction of a pump house or vault, and landscaping that is necessary to complete construction, repair, or abandonment of a water well that is 100 square feet or less.

This provision allows a licensed water well contractor to ensure all primary and incidental work on a water well project is completed without the requirement of contracting/employing a general contractor under ch. 489, F.S. to supervise the project.

License Renewal
According to statute, it appears a license can be in one of three states: active, inactive, and expired. An active license is a license that is issued to a licensee that has completed all tests (in the case of a new or initial license) or continuing education (in the case of a renewal), and has paid all associated fees by a water management district. A licensee that misses the deadline for continuing education and renewal fees will have a license that lapses into inactive status. The licensee in that case may still convert their license to active status after meeting regular renewal requirements and paying all associated fees, to include penalties and late fees.

However, if a license remains on inactive status for too long, it will expire. The licensee in that situation will need to reapply for a new license and pay the non-refundable application fee, as well as take the coursework and tests again required for an initial or new license.

This committee substitute amends the license renewal provisions of s. 373.324, F.S., to direct the department to establish a fee structure (not to exceed $20 per credit hour) for continuing education requirements. It allows the department to delegate the responsibilities of these requirements to the water management districts or to contract with private entities for such responsibilities. It further requires that the continuing education requirements for a license renewal be waived if the contractor obtained his first license within 180 days before the end of the biennial licensing cycle.

This committee substitute also provides that a servicemember, as defined in s. 250.01, F.S., or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted an active license extension for up to 180 days after the servicemember's return from those same orders to his or her Florida residence. During the 180-day extension, the eligible licensee may meet the statutory renewal requirements without penalty. The granting of the extension does not waive the requirement for the licensee to meet all renewal requirements to maintain an active license.

This provision appears to allow for an extension under any situation in which a servicemember or a servicemember and his or her spouse find themselves unable to renew their water well contractor license in a timely manner if the servicemember is on military orders. In other words, the extension may be granted if the servicemember is temporarily deployed on military orders or if the servicemember is permanently moved to a new duty station on military orders. This provision also stipulates that in order for a licensee to be granted a waiver under this subsection, the servicemember must provide military orders or a letter from his or her commander as proof of eligibility.

Penalties

In addition to the penalties currently provided in s. 373.336, F.S., the bill imposes a fine up to $5,000 on persons who drill water wells without a license. The policies and procedures for the enforcement of such fines are to be established by the DEP.

C. SECTION DIRECTORY:

Section 1. Amends s. 373.323, F.S., to provide that a licensed water well contractor may facilitate work, with other licensed contractors, that is incidental to the water well construction, repair, or abandonment.

Section 2. Amends s. 373.324, F.S., to address provisions relating to fees, continuing education requirements and the renewal of licenses for water well contractors.

Section 3 Amends s. 373.333, F.S., to provide penalties for persons drilling wells without a license.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This committee substitute does not reduce the percentage of a state tax shared with counties or municipalities. This committee substitute does not reduce the authority that municipalities have to raise revenues.

2. Other:

There do not appear to be any constitutional issues with this committee substitute.

B. RULE-MAKING AUTHORITY:

This committee substitute does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Committee on Military & Veteran Affairs approved two amendments to this bill.

- Amendment #1 clarifies that a licensed water well contractor's responsibility is to act as a facilitator and not as a prime contractor when dealing with other appropriately licensed contractors for the electrical, fencing, construction of a pump house or vault, and landscaping work that is necessary to complete construction, repair, or abandonment of a water well that is 100 square feet or less. The amendment also clarifies that nothing in this part of statute authorizes a licensed water well contractor to perform any services or work for which a license under ch. 489 is required.

- Amendment #2 provides that a servicemember or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted a 180-day extension upon return from those same orders to meet the license renewal requirements without penalty. However, the extension is waived if the licensee engages in water well contracting in the private sector for profit prior to completing all renewal requirements.

On April 11, 2006, the Agriculture and Environment Appropriations Committee approved two amendments to this bill:

- Amendment #1 creates a fee structure for continuing education requirements. It also allows for delegation of these requirements to the water management districts or for contracting out the responsibilities for them.

- Amendment #2 strikes the exception for the extension being waived if the licensee engages in water well contracting in the private sector for profit prior to completing all renewal requirements.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to regulation of wells; amending s. 373.323, F.S.; authorizing licensed water well contractors to facilitate work by certain licensed contractors under certain circumstances; providing a definition; amending s. 373.324, F.S.; requiring the Department of Environmental Protection to establish by rule a fee to cover the cost of implementing the continuing education requirements; providing a maximum fee amount; authorizing the department to delegate certain authority to the water management districts; authorizing the department or a water management district to contract with a private entity to carry out certain responsibilities relating to continuing education; waiving continuing education requirements for license renewal of certain water well contractors; providing water well contractor license extensions for certain servicemembers and their spouses under certain circumstances; providing for exemption from certain costs

or fees under certain circumstances; amending s. 373.333, F.S.; increasing the amount of the administrative fine a water management district may impose for certain water well contracting violations; amending s. 373.336, F.S.; providing fines for persons or entities drilling a water well without a license or contracting with unlicensed water well contractors for water well services; requiring the department to establish policies and procedures for the enforcement of the fines; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) is added to section 373.323, Florida Statutes, to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.--

(11) A licensed water well contractor may facilitate the performance of additional work by an appropriately licensed contractor that is incidental to the construction, repair, or abandonment of a water well. For purposes of this subsection, "incidental" work is limited to the electrical connection of a pump, connecting a well to a residential dwelling, constructing a pump house or pump vault of 100 square feet or less, constructing a nonstructural well slab of 100 square feet or less, fencing, and landscaping. Nothing in this part shall authorize a licensed water well contractor to perform any services or work for which a license under chapter 489 is required.

Section 2. Subsection (3) of section 373.324, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

373.324 License renewal.--

(3) The department shall prescribe by rule the method for renewal of a license, which shall include continuing education requirements of not less than 12 classroom hours for each renewal cycle. In addition to the fees provided in s. 373.329, the department by rule shall establish a fee not to exceed $20 per credit hour to be paid by the licensee for the cost of implementing the continuing education requirements of this subsection. The fee shall be based on the actual costs incurred in administering the responsibilities related to the continuing education requirements. The department may delegate to the water management districts, or the department or a water management district may contract with a private entity to carry out, the responsibilities related to the continuing education requirements. However, if a water well contractor has received his or her first license within 180 days before the end of the license biennium, the continuing education requirements shall be waived for the licensee's first renewal cycle.

(7) Notwithstanding the renewal requirements of subsection (3) and the provision under s. 250.4815, any active water well contractor license issued under this part to a servicemember as defined in s. 250.01 or his or her spouse, both of whom reside in the state, shall not become inactive while the servicemember is serving on military orders that take him or her over 35 miles from his or her residence, and the license shall be considered

an active license for up to 180 days after the servicemember returns to his or her residence in the state. If the license renewal requirements are met within the 180-day extension period, the servicemember or his or her spouse shall not be charged any additional costs above the normal license fees, including, but not limited to, late fees or delinquency fees. Nothing in this subsection shall be construed to waive renewal requirements such as applying, continuing education, and all associated fees. The servicemember must present to the water management district issuing the license a copy of his or her official military orders or a written verification from the servicemember's commanding officer before the end of the 180-day period in order to qualify for the extension.

Section 3. Paragraph (c) of subsection (5) of section 373.333, Florida Statutes, is amended to read:

373.333 Disciplinary guidelines; adoption and enforcement; license suspension or revocation.--

(5) When the water management district finds a person guilty of any of the grounds set forth in subsection (4), it may enter an order imposing one or more of the following disciplinary actions:

(c) Imposition of an administrative fine not to exceed $5,000 ~~$1,000~~ for each count or separate offense.

Section 4. Subsection (4) is added to section 373.336, Florida Statutes, to read:

373.336 Unlawful acts; penalties.--

(4) Persons or entities drilling a water well without a license or contracting with an unlicensed water well contractor

for water well services shall be subject to a fine of up to $5,000 for each violation. Policies and procedures for the enforcement of the fines shall be established by the department.

Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1345 CS Saltwater Fisheries
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 2490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	10 Y, 0 N	Lotspeich	Lotspeich
2) Agriculture & Environment Appropriations Committee	12 Y, 1 N, w/CS	Davis	Dixon
3) State Resources Council		Lotspeich RBL	Hamby JJH
4)			
5)			

SUMMARY ANALYSIS

The bill addresses several issues with regard to fees and penalties relating to taking blue crabs and spiny lobsters. Specifically, with regard to blue crabs the bill:

- amends s. 370.135, F.S., to create new "endorsement fees" for blue crabs;
- requires that $25 of the new endorsement fees must be used for the trap retrieval program;
- requires an annual fee of 50 cents for each blue crab trap tag;
- allows the FWCC to establish by rule an amount of equitable rent that may be recovered from trap owners to the state for the enhanced access to its natural resources;
- requires that all the funds from fees, penalties and equitable rent relating to the blue crab program be deposited in the Marine Resources Conservation Trust Fund;
- provides penalties for untagged traps.

With regard to the spiny lobster, the bill provides additional administrative penalties for any person forging or bartering spiny lobster trap tags or certificates during any period of time while a trap number is under suspension or revocation.

The bill amends s. 370.143, F.S., relating to the trap retrieval program, to add traps for blue crabs and black sea bass to the types of traps that fall under the current trap retrieval program for spiny lobsters and stone crabs.

The bill allows the Fish and Wildlife Conservation Commission to waive replacement trap tag fees for the commercial blue crab, commercial stone crab, and commercial spiny lobster fisheries, in the event of a declared emergency by the Governor.

The bill waives all blue crab fishery fees for the 2006-2007 license year, and appropriates $132,000 from the Marine Resources Conservation Trust Fund in order to pay for the program, tags and administrative costs associated with the blue crab management effort and its advisory board.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill increases the fees and penalties relating to the taking of blue crabs and spiny lobsters.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Blue Crabs

Background

The blue crab supports an important commercial trap fishery in the State of Florida. During the 1998 Session, concerns about the rapidly increasing number of traps in the blue crab fishery resulted in a legislative moratorium on the issuance of new blue crab endorsements.[1] Last year, the Fish and Wildlife Conservation Commission (FWCC) extended that moratorium until July 1, 2006, to allow for the completion and adoption of the blue crab limited entry endorsement program.[2]

Problems in the blue crab fishery include the seasonal crowding of traps in confined waterways, lost traps and bycatch, endorsements that are unused, and conflict between hard shell blue crab producers and soft shell blue crab producers.

During 2003, the FWCC Division of Marine Fisheries Management (MFM) assembled an industry advisory board, the *ad hoc* Blue Crab Advisory Board (BCAB), to develop an effort management program. The primary recommendation of the BCAB was to develop an effort management program for the blue crab fishery before the moratorium on issuing endorsements is lifted in July 2006. The BCAB recommended separating the hard shell blue crab fishery from the soft shell blue crab fishery and creating separate endorsements for each. Hard shell blue crabs are sold on the live market or to packing houses and have a minimum size limit of five inches carapace length. Soft shell crabs are peeler crabs that are allowed to molt in shedding tanks, are sold in the soft shell condition (usually frozen), and do not have a minimum size limit.

The plan endorsed by the BCAB creates a limited access fishery that would limit the total number of participants in the fishery, with an equal number of traps available to each endorsement. Each qualified hard shell crab endorsement can receive up to 600 trap tags, which can be used anywhere, and an additional 400 for offshore waters of the Gulf of Mexico. Each qualified soft shell crab endorsement can receive up to 400 trap tags with an additional 250 tags for a subsequent qualified endorsement.

Once the program has been established, individuals wishing to enter the fishery would be required to purchase an existing blue crab endorsement and its associated traps from someone wishing to exit the fishery. Each trap will be required to have a tag, with the endorsement holder's number firmly attached. Trap tags would be supplied by the FWCC. The Commissioners approved this plan in April 2005, to become effective July 1, 2006.[3]

Based upon public testimony at the April 2005 meeting, the Commissioners directed staff to investigate mechanisms to accommodate fishers affected by the 1995 Net Limitation Constitutional Amendment (Article X, Section 16, Florida Constitution) who have a blue crab endorsement but no qualifying

[1] Subsection 370.135(2)(a), F.S.
[2] Rule 68B-45.004(9)(b)
[3] Rule 68B-45.007, F.A.C.

landings, and in other fisheries in which blue crab bycatch is permitted. This affected several thousand commercial fishers who used this type of gear to harvest inshore species such as mullet. In 2000, a limited entry program for the stone crab fishery was implemented that issued trap tag certificates based upon reported commercial stone crab landings. Bona fide displaced netters, who would not have qualified to be in the program, were awarded a certain amount of trap certificates as compensation for the loss of their net gear. Many of these displaced net fishers also possess a blue crab endorsement, but do not have any reported blue crab landings during the qualifying years. These endorsements are free and have been renewed over the years as an additional fishery option should their principal fishery fail. Staff developed language by which qualified displaced netters could be issued a non-transferable blue crab endorsement that would make them eligible for up to 100 trap tags.

A blue crab bycatch in shrimp trawls (200 pounds per day) has been allowed since 1993, and a nominal amount of blue crabs have historically been landed as bycatch from stone crab traps. Under the new blue crab limited entry program, a harvester must possess a blue crab endorsement to harvest, possess, and sell commercial quantities of blue crab. Staff developed language establishing an incidental take endorsement to allow the incidental harvest, possession, and sale of 200 pounds of blue crabs from shrimp trawls and stone crab traps. This incidental take endorsement has precedence in the stone crab fishery.[4]

The BCAB recommended setting a fee for the hard shell blue crab endorsement at $125; a fee for the soft shell blue crab endorsement of $250, a fee for the displaced-netters blue crab endorsement of $125, and a fee for the incidental take endorsement of $25. The BCAB recommended that $25 of each endorsement fee, except for the incidental take endorsement, would be used for the trap retrieval program administered by FWCC in cooperation with the commercial fishing industry. Additionally, the BCAB recommended a trap tag fee $0.50 per tag.

The Commissioners approved all of the BCAB's fee recommendations and requested that they be presented to the 2006 Legislature.

Current Law

Section 370.135. F.S., currently addresses the regulatory requirements relating to the commercial taking of blue crabs using traps. Pursuant to the provisions of subsection 370.135(1), F.S., blue crabs may not be taken using a trap unless the person, firm or corporation setting the trap holds a valid saltwater products license issued by the FWCC pursuant to s. 370.06, F.S., and the trap has a current state number permanently attached to the buoy used to mark the trap.

Under subsection 370.135(1), F.S., it is a third degree felony for anyone to willfully molest any trap, line or buoy that belongs to another without the express written permission of the trap owner. Any person receiving a judicial disposition for such a violation, in addition to the penalties specified in s. 370.021, F.S., (general penalties for violations of FWCC rules), shall lose all saltwater fishing privileges for a period of 24 calendar months.

It is also unlawful under this subsection to remove the contents of another harvester's trap or to take possession of such a trap. Such removal or possession constitutes a theft. Any person receiving a judicial disposition for such a violation, in addition to the penalties specified in s. 370.021, F.S., shall lose all saltwater fishing privileges for a period of 24 calendar months.

In addition, any person receiving a judicial disposition for any violation of subsection 370.135(1), F.S., or s. 370.1107, F.S., (unlawful possession of licensed saltwater fisheries traps) shall be assessed an administrative penalty of up to $5,000.

[4] Subsubparagraph 370.13(1)(b)6(c), F.S.

Spiny Lobster

Background

The spiny lobster trap certificate program was established by statute (s. 370.142, F.S.) in 1990 to "stabilize the fishery by reducing the total number of traps, which should increase the yield per trap and maintain or increase overall catch levels". The program was implemented in response to rapid growth of the fishery and associated problems of "increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution. . . ." The number of traps in the fishery was capped at 750,327 and fishers were allocated their share of allowable traps on the basis of their historical landings.[5] Each year fishers receive one trap tag for each trap certificate on record in their file. Only lobster traps bearing a trap tag issued by the FWCC may be fished. A fisher may buy or sell trap certificates on the open market.

Current Law

Section 370.14, F.S., addresses the regulatory requirements for taking spiny lobsters (crawfish). Under this section, any person taking or attempting to take a crawfish with a trap in commercial quantities must obtain and exhibit a crawfish trap number as required by the FWCC. Under subsection. 370.142(2), F.S., the FWCC has established a "trap certificate program" for the spiny lobster fishery. Each person who holds a saltwater products license who uses traps for taking spiny lobsters is required to have a certificate on record for each trap that is used. In addition, each trap must have affixed to it an annual tag issued by the FWCC.

Paragraph 370.142(2)(c), F.S., provides for prohibitions and penalties regarding violations relating to the spiny lobster trap certificate program. Specifically, it is unlawful for a person to:

- possess or use a spiny lobster trap without the required certificate and tag;
- molest a trap or remove its contents;
- forge a trap certificate of tag;
- barter, trade, sell, supply a trap certificate or tag.

This paragraph provides for civil penalties ranging from $1,000 to $5,000 and suspensions and revocations of the holders trap number. It also provides for a third degree felony for any person who violates the forging or bartering provisions during the period of time that a trap number is under suspension.[6]

Trap Retrieval Program

Background

Spiny lobster season ends on March 31 each year; stone crab season ends on May 15. Fishers are required to remove their traps from the water during the closed season. Traps may be left in the water at the close of season for several reasons: (1) they were moved by currents or dragged by boats and lost to the owner; (2) the owner is either unable to bring them in, e.g. because of illness, a mechanical problem with his boat, etc., or chooses to not retrieve them; or (3) the owner may intend to continue fishing. Traps left in the water pose two basic problems: they continue to catch product, much of which dies, and they have the potential to be illegally fished. Also, traps that are left in the water can end up as "derelict traps" or "trap debris", swept shoreward by currents into mangrove forests, shallow water flats, grass beds and marsh areas.

While spiny lobster and stone crab have long had specific closed seasons, blue crab has been a year-round fishery until recently. In 2003, the Commission closed the blue crab fishery in an area north and west of the Suwannee River seaward of a line three nautical miles from shore for the 14 days prior to stone crab season. In 2004, the 14-day closure zone was extended to the entire Gulf Coast, seaward

[5] Rule 68E-18, F.A.C.
[6] Subsubparagraph 370.142(2)(c)6a, F.S.

of the three-nautical-mile line. The principal reason for excluding blue crab traps from waters beyond the three mile line is to preclude the possibility that such traps could be used to collect stone crab immediately prior to the beginning of the stone crab fishing season.

In 2003, the Commission adopted guidelines for trap retrieval and trap debris removal.[7] Definitions apply to spiny lobster, stone crab, and blue crab traps, and a closed season now exists for all three fisheries.

Current Law

Section 370.143, F.S., authorizes the FWCC to implement a trap retrieval program for retrieval of spiny lobster and stone crab traps remaining in the water during the closed season for each species. Trap owners are charged a retrieval fee of $10 per trap. Traps recovered under this program become the property of the FWCC or its contract agent and must be destroyed or resold to the original owner. The revenue from retrieval fees is deposited into the Marine Resources Conservation Trust Fund and is used solely for operation of the trap retrieval program.

Payment of all assessed retrieval fees must be received by the FWCC prior to renewal of the trap owner's saltwater products license and stone crab and or crawfish endorsements. Retrieval fees assessed under this program stand in lieu of other penalties imposed for such trap violations.

EFFECT OF PROPOSED CHANGES

Blue Crabs

The bill amends s. 370.135, F.S., to create new "endorsement fees" for blue crabs. The taking of blue crabs is currently regulated by the FWCC under Rule Chapter 68B-45, F.A.C. The new fees are:

- $125 for taking hard-shell blue crabs;
- $250 for taking soft-shell blue crabs;
- $125 for a nontransferable blue crab endorsement;
- $25 for an incidental take blue crab endorsement.

The bill requires that $25 of the new endorsement fees for the hard-shell, soft-shell and nontransferable blue crab endorsement be used for the trap retrieval program.

The bill also requires an annual fee of 50 cents for each blue crab trap tag. The fee for replacement tags that have been lost or damaged is also 50 cents plus the cost of shipping. The Commission may also waive this fee if the Governor declares a state of emergency.

All of these fees listed above are waived for the 2006-2007 license year for those qualifying by September 30, 2006.

The bill allows the FWCC to establish by rule an amount of "equitable rent" that the FWCC may recover from blue crab trap owners for their enhanced access to the state's natural resources. In making a decision whether to impose the equitable rent and in determining the amount charged, the FWCC is permitted to consider the amount of revenues generated each year by endorsement fees, trap tags, replacement tags, trap retrieval fees, and the continued economic viability of the commercial blue crab industry.

All the funds from fees, penalties and equitable rent relating to the blue crab program are to be deposited in the Marine Resources Conservation Trust Fund. No more than 50 percent of the revenues may be used for the operation and administration of the blue crab program.

[7] Rule 68B-55, F.A.C.

The bill provides penalties for untagged blue crab traps. The first violation of the requirements for trap tags will subject the violator to an administrative penalty of up to $1,000 and the blue crab fishing privileges may be suspended for the remainder of the current license year. Subsequent violations will subject the violator to increasing administrative penalties up to $5,000 and increasing terms of suspension of blue crab fishing privileges.

The bill sets administrative penalties and provides for a third degree felony for conviction of violating commission rules regarding blue crab trap theft and molestation, and for bartering trading, selling or leasing and forging trap tags. Any person convicted of fraudulently reporting the actual value of transferred blue crab endorsements may have his/her blue crab endorsements automatically suspended or revoked by the FWCC. If an endorsement is permanently revoked, the FWCC must also permanently deactivate the endorsement holder's blue crab trap tag accounts. All traps subject to a suspended or revoked endorsement must be removed from the water within 15 days from notice by the FWCC. Failure to do so will result in a 6 month extension of the suspension or revocation.

The bill appropriates $132,000 from the Marine Resources Conservation Trust Fund in order to pay for the program, tags and administrative costs associated with the blue crab management effort and its advisory board.

Spiny Lobster

The bill provides that any person who receives a judicial disposition other than an acquittal or dismissal for a violation of the prohibitions against forging or bartering spiny lobster trap tags or certificates (Subparagraph 370.142(2)(c)5, F.S.) during any period of time while a trap number is under suspension or revocation shall be assessed an administrative penalty of up to $5,000, and the person's crawfish endorsement may be suspended for up to 24 months.

The bill provides the FWCC may waive trap tag replacement fees if the Governor declares a state of emergency.

Trap Retrieval Program

The bill amends s. 370.143, F.S., relating to the trap retrieval program, to add traps for blue crabs and black sea bass to the types of traps that fall under the current program for spiny lobsters and stone crabs.

Marine Resources Conservation Trust Fund

Purposes of this trust fund are expanded to include funding for the stone crab, blue crab, and spiny lobster commercial trap programs, including the trap retrieval program. The trust fund is also designated as the depository of any fees or fines collected from these programs.

C. SECTION DIRECTORY:

Section 1. Amends s. 370.0603, F.S., to specify additional purposes and uses the Marine Resources Conservation Trust Fund.

Section 2. Amends s. 370.13, F.S., to address fees relating to stone crab fishery programs.

Section 3. Amends s. 370.135, F.S., to address fees, penalties, and equitable rent relating to blue crab traps.

Section 4. Amends s. 370.142, F.S., to address fees and penalties relating to the spiny lobster trap certificate program.

Section 5. Amends s. 370.143, F.S., to add blue crabs and black sea bass to the trap retrieval program.

Section 6. Provides appropriations for the blue crab trap tag program and the Blue Crab Advisory Board.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 06-07 Amount / FTE	FY 07-08 Amount / FTE	FY 08-09 Amount / FTE
Marine Resources Consv TF			
Blue Crab Endorsements	$ 138,500	$138,500	$ 138,500
Trap Tags	-0-	430,275	430,275
Total	$ 138,500	$ 568,775	$ 568,775

2. Expenditures:

a. Licensing & Permitting-Expenses (Trap Tag costs and Program costs)	$ 120,000	$ 120,000	$ 120,000
b. Marine Fisheries Mgt-Expenses (Operations & Advisory Board)	12,000	12,000	12,000
c. Trap retrieval, research, public education, enforcement activities	-0-	436,775	436,775
Total	$ 132,000	$ 568,775	$ 568,775

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial blue crab fishers will be assessed an annual fee for the blue crab endorsement ($125 for hard shell crab endorsement; $250 for a soft shell crab endorsement; $125 for a non-transferable blue crab endorsement; or $25 for the blue crab incidental take endorsement) and $0.50 for each trap tag received.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference (CJIC) has not considered the prison bed impact, if any, of the third degree felony in the bill. The bill modifies an existing third degree felony relating to blue crab trap molestation by moving the offense to a different subsection, providing additional direction of its scope, and by making the penalty for violation of commission rule. Typically, the CJIC estimates a third degree felony with a Level 1 ranking on the offense severity ranking chart will have an insignificant prison bed impact, absent any significant prior criminal history. Probation, a likely non-prison sanction, has an indeterminate but probably minimal fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to exercise the regulatory and executive powers of the state with respect to fresh water aquatic life, marine life, and wild animal life. However, this Constitutional provision requires that "all license fees for taking wild animal life, fresh water aquatic life and marine life and penalties for violating regulations of the commission shall be prescribed by general law." The fees and penalties provided by the bill appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill allows the FWCC to establish by rule an amount of "equitable rent" that the FWCC may recover from blue crab trap owners for their enhanced access to the state's natural resources.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted six amendments, outlined as follows:

- Allows FWCC to waive replacement trap tag fees for commercial blue crab, stone crab, and spiny lobster fisheries, in the event of a declared emergency by the Governor. (3 separate amendments)
- Waives blue crab fishery fees for the 2006-2007 license year.
- Clarifies existing language regarding the appropriation of funds.
- Specifies use of the Marine Resources Conservation Trust Fund for the stone crab, blue crab, and spiny lobster programs, including trap retrieval, and provides this trust fund as the depository of any fees or fines collected from these programs.

This analysis is drawn to the bill as amended.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to saltwater fisheries; amending s. 370.0603, F.S.; authorizing use of the Marine Resources Conservation Trust Fund to fund the stone crab reduction, blue crab effort management, spiny lobster trap certificate, and trap retrieval programs; requiring proceeds from certain fees, fines, and penalties to be deposited in the Marine Resources Conservation Trust Fund; amending s. 370.13, F.S., relating to stone crab regulation; authorizing the Fish and Wildlife Conservation Commission to waive or defer replacement tag fees under certain circumstances; amending s. 370.135, F.S., relating to blue crab regulation; establishing certain endorsement fees for the taking of blue crabs; establishing an annual trap tag fee; authorizing the commission to waive or defer replacement tag fees under certain circumstances; authorizing the commission to establish by rule an amount

of equitable rent for access to state natural resources; requiring approval of such rule by the Governor and Cabinet; requiring the deposit of certain proceeds into the Marine Resources Conservation Trust Fund; specifying the use of such proceeds; requiring the commission to waive endorsement and tag fees for certain program participants; providing administrative penalties for certain violations; prohibiting the unauthorized possession of trap gear or removal of trap contents and providing penalties therefor; providing penalties for certain other prohibited activities relating to traps, lines, buoys, and trap tags; providing penalties for fraudulent reports related to endorsement transfers; prohibiting certain activities during endorsement suspension and revocation; preserving state jurisdiction for certain convictions; providing requirements for certain license renewal; appropriating certain fee revenues to the commission for blue crab effort management program costs; requiring the commission to create an advisory board; amending s. 370.142, F.S., relating to the spiny lobster trap certificate program; authorizing the commission to waive or defer replacement tag fees under certain circumstances; providing administrative penalties for certain violations of the spiny lobster trap certificate program; amending s. 370.143, F.S.; revising provisions for certain trap retrieval programs and fees; providing a recurring appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (j) is added to subsection (1) of section 370.0603, Florida Statutes, and paragraphs (c) and (d) of subsection (2) of that section are amended, to read:

370.0603 Marine Resources Conservation Trust Fund; purposes.--

(1) The Marine Resources Conservation Trust Fund within the Fish and Wildlife Conservation Commission shall serve as a broad-based depository for funds from various marine-related and boating-related activities and shall be administered by the commission for the purposes of:

(j) Funding the stone crab trap reduction program under s. 370.13, the blue crab effort management program under s. 370.135, the spiny lobster trap certificate program under s. 370.142, and the trap retrieval program under s. 370.143.

(2) The Marine Resources Conservation Trust Fund shall receive the proceeds from:

(c) All fees collected pursuant to ss. 370.063, 370.13, 370.135, 370.142, 370.143, and 372.5704.

(d) All fines and penalties pursuant to ss. ~~s.~~ 370.021, 370.13, 370.135, and 370.142.

Section 2. Paragraph (b) of subsection (1) of section 370.13, Florida Statutes, is amended to read:

370.13 Stone crab; regulation.--

(1) FEES AND EQUITABLE RENT.--

(b) Certificate fees.--

1. For each trap certificate issued by the commission under the requirements of the stone crab trap limitation program established by commission rule, there is an annual fee of 50 cents per certificate. Replacement tags for lost or damaged tags cost 50 cents each. In the event of a major natural disaster, such as a hurricane or major storm, which causes massive trap losses within an area declared by the Governor to be a disaster emergency area, the commission may temporarily defer or permanently waive replacement tag fees, ~~except that tags lost in the event of a major natural disaster declared as an emergency disaster by the Governor shall be replaced for the cost of the tag as incurred by the commission~~.

2. The fee for transferring trap certificates is $1 per certificate transferred, except that the fee for eligible crew members is 50 cents per certificate transferred. Eligible crew members shall be determined according to criteria established by rule of the commission. Payment must be made by money order or cashier's check, submitted with the certificate transfer form developed by the commission.

3. In addition to the transfer fee, a surcharge of $1 per certificate transferred, or 25 percent of the actual value of the transferred certificate, whichever is greater, will be assessed the first time a certificate is transferred outside the original holder's immediate family.

4. Transfer fees and surcharges only apply to the actual number of certificates received by the purchaser. A transfer of a certificate is not effective until the commission receives a notarized copy of the bill of sale as proof of the actual value

of the transferred certificate or certificates, which must also be submitted with the transfer form and payment.

5. A transfer fee will not be assessed or required when the transfer is within a family as a result of the death or disability of the certificate owner. A surcharge will not be assessed for any transfer within an individual's immediate family.

6. The fees and surcharge amounts in this paragraph apply in the 2005-2006 license year and subsequent years.

Section 3. Subsection (1) of section 370.135, Florida Statutes, is amended, and subsections (3), (4), (5), and (6) are added to that section, to read:

370.135 Blue crab; regulation.--

(1) No person, firm, or corporation shall transport on the water, fish with or cause to be fished with, set, or place any trap designed for taking blue crabs unless such person, firm, or corporation is the holder of a valid saltwater products license issued pursuant to s. 370.06 and the trap has a current state number permanently attached to the buoy. The trap number shall be affixed in legible figures at least 1 inch high on each buoy used. The saltwater products license must be on board the boat, and both the license and the crabs shall be subject to inspection at all times. Only one trap number may be issued for each boat by the commission upon receipt of an application on forms prescribed by it. This subsection shall not apply to an individual fishing with no more than five traps. ~~It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully to molest any~~

~~traps, lines, or buoys, as defined herein, belonging to another without the express written consent of the trap owner. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of willful molestation of a trap, in addition to the penalties specified in s. 370.021, shall lose all saltwater fishing privileges for a period of 24 calendar months. It is unlawful for any person to remove the contents of or take possession of another harvester's trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap pursuant to this section or s. 370.1107 shall, in addition to the penalties specified in s. 370.021 and the provisions of this section, permanently lose all his or her saltwater fishing privileges including his or her saltwater products license and blue crab endorsement. In such cases endorsements, landings history, and trap certificates are nontransferable. In addition, any person, firm, or corporation receiving a judicial disposition other than dismissal or acquittal for violating this subsection or s. 370.1107 shall also be assessed an administrative penalty of up to $5,000. Immediately upon receiving a citation for a violation involving theft of or from a trap and until adjudicated for such a violation, or receiving a judicial disposition other than dismissal or acquittal for such a violation, the person, firm, or corporation committing the violation is prohibited from~~

~~transferring any blue crab endorsements, landings history, or trap certificates.~~

(3)(a) Endorsement fees.--

1. The fee for a hard-shell blue crab endorsement for the taking of hard-shell blue crabs, as required by rule of the commission, is $125, $25 of which must be used solely for trap retrieval under s. 370.143 and rule 68B-55, Florida Administrative Code.

2. The fee for a soft-shell blue crab endorsement for the taking of soft-shell blue crabs, as required by rule of the commission, is $250, $25 of which must be used solely for trap retrieval under s. 370.143 and rule 68B-55, Florida Administrative Code.

3. The fee for a nontransferable blue crab endorsement for the taking of hard-shell blue crabs, as required by rule of the commission, is $125, $25 of which must be used solely for trap retrieval under s. 370.143 and rule 68B-55, Florida Administrative Code.

4. The fee for an incidental-take blue crab endorsement for the taking of blue crabs as bycatch in shrimp trawls and stone crab traps, as established by commission rule, is $25.

(b) Trap tag fees.--For each trap tag issued by the commission under the requirements of the blue crab effort management program established by commission rule, there is an annual fee of 50 cents per tag. The fee for replacement tags for lost or damaged tags is 50 cents each plus shipping. In the event of a major natural disaster, such as a hurricane or major storm, which causes massive trap losses within an area declared

by the Governor to be a disaster emergency area, the commission may temporarily defer or permanently waive replacement tag fees.

(c) Equitable rent.--The commission may establish by rule an amount of equitable rent that may be recovered as partial compensation to the state for the enhanced access to its natural resources. In determining whether to establish such a rent and the amount thereof, the commission may consider the amount of revenues annually generated by endorsement fees, trap tag fees, replacement trap tag fees, trap retrieval fees, and the continued economic viability of the commercial blue crab industry. Final approval of such a rule shall be by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(d) Disposition of fees, surcharges, civil penalties and fines, and equitable rent.--Endorsement fees, trap tag fees, civil penalties and fines, replacement trap tag fees, trap retrieval fees, and equitable rent, if any, shall be deposited in the Marine Resources Conservation Trust Fund. Not more than 50 percent of the revenues generated under this section may be used for the operation and administration of the blue crab effort management program. The remaining revenues generated under this section shall be used for trap retrieval, management of the blue crab fishery, public education activities, research, and enforcement activities in support of the blue crab effort management program.

(e) Waiver of fees.--For the 2006-2007 license year, the commission shall waive all fees under this subsection for all persons who qualify by September 30, 2006, to participate in the

blue crab effort management program established by commission rule.

(4)(a) Untagged trap penalties.--In addition to any other penalties provided in s. 370.021 for any person, firm, or corporation that violates rule 68B-45.007(6)(b), Florida Administrative Code, the following administrative penalties apply:

1. For a first violation, the commission shall assess an administrative penalty of up to $1,000 and the blue crab endorsement holder's blue crab fishing privileges may be suspended for the remainder of the current license year.

2. For a second violation that occurs within 24 months after any previous such violation, the commission shall assess an administrative penalty of up to $2,000 and the blue crab endorsement holder's blue crab fishing privileges may be suspended for 12 calendar months.

3. For a third violation that occurs within 36 months after any two previous such violations, the commission shall assess an administrative penalty of up to $5,000 and the blue crab endorsement holder's blue crab fishing privileges may be suspended for 24 calendar months.

4. A fourth violation that occurs within 48 months after any three previous such violations shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 370.021.

Any person assessed an administrative penalty under this paragraph shall, within 30 calendar days after notification, pay the administrative penalty to the commission or request an administrative hearing under ss. 120.569 and 120.57. The proceeds of all administrative penalties collected under this paragraph shall be deposited in the Marine Resources Conservation Trust Fund.

(b) Trap theft; prohibitions and penalties.--It is unlawful for any person to remove or take possession of the contents of another harvester's trap without the express written consent of the trap owner, which must be available for immediate inspection. Unauthorized possession of another harvester's trap gear or removal of trap contents constitutes theft. Any person convicted of theft of or from a trap pursuant to this paragraph shall, in addition to the penalties specified in s. 370.021 and the provisions of this section, permanently lose all of his or her saltwater fishing privileges, including saltwater products licenses, blue crab endorsements, and all trap tags allotted to him or her by the commission. In such cases, endorsements are nontransferable. In addition, any person, firm, or corporation convicted of a violation of this paragraph shall also be assessed an administrative penalty of up to $5,000. Immediately upon receiving a citation for a violation involving theft of or from a trap and until adjudicated for such a violation or upon receipt of a judicial disposition other than dismissal or acquittal on such a violation, the violator is prohibited from transferring any blue crab endorsement.

(c) Criminal activities.--Any person, firm, or corporation convicted of violating commission rules that prohibit any of the following commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

1. The willful molestation of any blue crab trap, line, or buoy that is the property of any licenseholder, without the permission of that licenseholder.

2. The bartering, trading, leasing, or sale, or conspiring or aiding in such barter, trade, lease, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away blue crab trap tags unless the action is duly authorized by the commission as provided by commission rules.

3. The making, altering, forging, counterfeiting, or reproducing of blue crab trap tags.

4. Possession of altered, forged, counterfeit, or imitation blue crab trap tags.

5. Possession of commission-issued original trap tags and commission-issued replacement trap tags, the sum of which exceeds by 1 percent the number of traps allowed by rule of the commission.

6. Engaging in the commercial harvest of blue crabs during the time the licenseholder's blue crab endorsements are under suspension or revocation.

Any person, firm, or corporation convicted of a violation of this paragraph shall be assessed an administrative penalty of up to $5,000, and all of the blue crab endorsements possessed by the person, firm, or corporation may be suspended for up to 24

calendar months. Immediately upon receiving a citation involving a violation of this paragraph and until adjudicated for such a violation, or if convicted of such a violation, the person, firm, or corporation committing the violation is prohibited from transferring any blue crab endorsements.

(d) Endorsement transfers; fraudulent reports; penalties.--For any person, firm, or corporation convicted of fraudulently reporting the actual value of transferred blue crab endorsements, the commission may automatically suspend or permanently revoke the seller's or the purchaser's blue crab endorsements. If the endorsement is permanently revoked, the commission shall also permanently deactivate the endorsement holder's blue crab trap tag accounts.

(e) Prohibitions during endorsement suspension and revocation.--During any period of suspension or revocation of a blue crab endorsement holder's endorsements, he or she shall, within 15 days after notice provided by the commission, remove from the water all traps subject to that endorsement. Failure to do so shall extend the period of suspension or revocation for an additional 6 calendar months.

(5) For purposes of this section, a conviction is any disposition other than acquittal or dismissal.

(6) An endorsement may not be renewed until all fees and administrative penalties imposed under this section are paid.

Section 4. Paragraphs (b) and (c) of subsection (2) of section 370.142, Florida Statutes, are amended to read:

370.142 Spiny lobster trap certificate program.--

(2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES; PENALTIES.--The Fish and Wildlife Conservation Commission shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(b) Trap tags.--Each trap used to take or attempt to take spiny lobsters in state waters or adjacent federal waters shall, in addition to the crawfish trap number required by s. 370.14(2), have affixed thereto an annual trap tag issued by the commission. Each such tag shall be made of durable plastic or similar material and shall, based on the number of certificates held, have stamped thereon the owner's license number. To facilitate enforcement and recordkeeping, such tags shall be issued each year in a color different from that of each of the previous 3 years. The annual certificate fee shall be $1 per certificate. Replacement tags for lost or damaged tags may be obtained as provided by rule of the commission. In the event of a major natural disaster, such as a hurricane or major storm, which causes massive trap losses within an area declared by the Governor to be a disaster emergency area, the commission may temporarily defer or permanently waive replacement tag fees.

(c) Prohibitions; penalties.--

1. It is unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid

in the taking of spiny lobster by trapping that is not a trap as defined in rule 68B-24.006(2), Florida Administrative Code.

2. It is unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. It is unlawful for any person to willfully molest, take possession of, or remove the contents of another harvester's trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap pursuant to this subparagraph or s. 370.1107 shall, in addition to the penalties specified in ss. 370.021 and 370.14 and the provisions of this section, permanently lose all his or her saltwater fishing privileges, including his or her saltwater products license, crawfish endorsement, and all trap certificates allotted to him or her through this program. In such cases, trap certificates and endorsements are nontransferable. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of willful molestation of a trap, in addition to the penalties specified in ss. 370.021 and 370.14, shall lose all saltwater fishing privileges for a period of 24 calendar months. In addition, any person, firm, or corporation charged with violating this paragraph and receiving a judicial disposition other than dismissal or acquittal for violating this subparagraph or s. 370.1107 shall also be assessed an administrative penalty of up

to $5,000. Immediately upon receiving a citation for a violation involving theft of or from a trap, or molestation of a trap, and until adjudicated for such a violation or, upon receipt of a judicial disposition other than dismissal or acquittal of such a violation, the person, firm, or corporation committing the violation is prohibited from transferring any crawfish trap certificates and endorsements.

4. In addition to any other penalties provided in s. 370.021, a commercial harvester, as defined by rule 68B-24.002(1), Florida Administrative Code, who violates the provisions of this section, or the provisions relating to traps of chapter 68B-24, Florida Administrative Code, shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the commission shall assess an additional civil penalty of up to $1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year. For all other first violations, the commission shall assess an additional civil penalty of up to $500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the commission shall assess an additional civil penalty of up to $2,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1., subparagraph 2., or subparagraph 3. which occurs within 36

months of any previous two such violations, the commission shall assess an additional civil penalty of up to $5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(2)(h).

d. Any person assessed an additional civil penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the civil penalty to the commission; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The commission shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for any person failing to comply with the provisions of sub-subparagraph d.

5.a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his or her possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by

the commission as provided in this chapter or in the rules of the commission.

6.a. Any person who violates the provisions of subparagraph 5., or any person who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (6) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the commission shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any person who violates the provisions of sub-subparagraph 5.c.

c. In addition to any penalty imposed pursuant to sub-subparagraph a., any person receiving any judicial disposition other than acquittal or dismissal for a violation of subparagraph 5. shall be assessed an administrative penalty of up to $5,000, and the crawfish endorsement under which the violation was committed may be suspended for up to 24 calendar months. Immediately upon issuance of a citation involving a violation of subparagraph 5. and until adjudication of such a violation, and after receipt of any judicial disposition other than acquittal or dismissal for such a violation, the person holding the crawfish endorsement listed on the citation is prohibited from transferring any spiny lobster trap certificates.

7. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the commission. During any period of trap reduction, any certificates reverting to the commission shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the commission are to be reallotted in such manner as provided by the commission.

8. The proceeds of all civil penalties collected pursuant to subparagraph 4. and all fines collected pursuant to sub-subparagraph 6.b. shall be deposited into the Marine Resources Conservation Trust Fund.

9. All traps shall be removed from the water during any period of suspension or revocation.

Section 5. Subsections (1), (2), and (3) of section 370.143, Florida Statutes, are amended to read:

370.143 Retrieval of spiny lobster, ~~crawfish, and~~ stone crab, blue crab, and black sea bass traps during closed season; commission authority; fees.--

(1) The Fish and Wildlife Conservation Commission is authorized to implement a trap retrieval program for retrieval of spiny lobster, ~~crawfish, and~~ stone crab, blue crab, and black sea bass traps remaining in the water during the closed season for each species. The commission is authorized to contract with outside agents for the program operation.

(2) A retrieval fee of $10 per trap retrieved shall be assessed trap owners. However, for each person holding a spiny lobster endorsement, ~~crawfish stamp number or~~ a stone crab

endorsement, or a blue crab endorsement issued under rule of the commission, the retrieval fee shall be waived for the first five traps retrieved. Traps recovered under this program shall become the property of the commission or its contract agent, as determined by the commission, and shall be either destroyed or resold to the original owner. Revenue from retrieval fees shall be deposited in the Marine Resources Conservation Trust Fund and used solely for operation of the trap retrieval program.

(3) Payment of all assessed retrieval fees shall be required prior to renewal of the trap owner's saltwater products license ~~and stone crab and or crawfish endorsements~~. Retrieval fees assessed under this program shall stand in lieu of other penalties imposed for such trap violations.

Section 6. Beginning in the 2006-2007 fiscal year, the sum of $132,000 is appropriated from the Marine Resources Conservation Trust Fund to the Fish and Wildlife Conservation Commission on a recurring basis for the purposes of implementing the blue crab effort management program pursuant to s. 370.135(3)(b), Florida Statutes, and providing for the administrative costs of the Blue Crab Advisory Board as created by commission rule.

Section 7. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1533 Petroleum Contamination
SPONSOR(S): Sands
TIED BILLS: **IDEN./SIM. BILLS:** SB 2126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N	Perkins	Kliner
2) Agriculture & Environment Appropriations Committee	11 Y, 0 N	Dixon	Dixon
3) State Resources Council		Perkins RP	Hamby JRQ
4)			
5)			

SUMMARY ANALYSIS

The bill creates a presumption regarding the discovery of additional contamination at certain underground petroleum storage tank sites that are being upgraded to secondary containment as required by the Department of Environmental Protection (DEP). The presumption is that the secondary discovery of contamination is part of the original discharge that initially qualified the site for state funding. The bill also provides certain conditions under which the presumption does not apply.

The bill does not appear to have a significant fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation. However, DEP reports the fiscal impact of this bill can be handled through the existing resources of the Inland Protection Trust Fund (IPTF)[1] and will not require any additional appropriations.

Safeguard Individual Liberty : The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation. However, DEP reports the fiscal impact of this bill can be handled through the existing resources of the IPTF and will not require any additional appropriations. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

Promote Personal Responsibility: The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation. However, DEP reports the fiscal impact of this bill can be handled through the existing resources of the IPTF and will not require any additional appropriations. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

B. EFFECT OF PROPOSED CHANGES:

The Storage Tank Regulation Section is part of the Bureau of Petroleum Storage Systems in the DEP Division of Waste Management. In 1983, Florida was one of the first states in the country to pass legislation (State Underground Petroleum Environmental Response Act) and adopt rules for regulation of underground and aboveground storage tank systems. Since then, over 28,000 facilities have reported discharges of petroleum products from storage tank systems.

Florida relies on groundwater for about 92 percent of its drinking water needs, and has some of the most stringent water pollution rules in the country. To further the safeguards for the water system, all new and replacement petroleum storage tank systems must have secondary containment, and all remaining single-wall systems must replace their systems with secondary containment by the beginning of 2010. DEP contracts with counties to perform annual compliance inspections.[2]

Thousands of petroleum facilities that are eligible for state funded cleanups occasionally have additional discharges that are not covered by a state funded program. Distinguishing between the original discharge and the new discharge can be very difficult and determining the costs of cleanup associated with each discharge can be equally difficult. "Old discharges" at a site eligible for state-funded cleanup (reported prior to December 31, 1998) are eligible to be cleaned up using state funds. "New discharges" (reported after December 31, 1998) are not eligible for state funding. For those new discharges, the owner of the petroleum facility would be responsible for funding the cleanup through their environmental liability insurance for a new discharge.

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[1] The IPTF is a non-lapsing revolving trust fund with revenues generated from an excise tax per barrel of petroleum products currently produced or imported into the state to pay for the expedited cleanup of petroleum contaminated sites.

[2] http://www.dep.state.fl.us/waste/categories/pss/default.htm

The current environmental liability insurance policies in effect in Florida contain provisions that have proven to be problematic:

- Policies are covering only discharges that can be shown to have occurred during the policy period. It is difficult to determine when a discharge occurred.
- The policy will cover only discharges from the storage system. If the system passes a tightness test, the insurer will deny coverage.
- The policies require that the discharges occur after a retroactive date. Again, it is difficult to prove when a discharge occurred.
- Some carriers have policy exclusions for contamination "arising from the removal" of a storage system. The exclusion also applies to discharges "arising from maintenance" activities. This further complicates the timely upgrading of tanks to secondary containment.[3]

The dominant environmental insurance carrier in Florida, AIG, will not write or renew coverage on older single-walled corrosion-resistant systems. The concern appears to be that when these single-walled containment systems are replaced with the required secondary containment systems, contamination will be discovered and claims will be filed. Great American and Mid-Continent Insurance companies are no longer writing coverage in Florida. Zurich Insurance will not write coverage if the insured plans to replace their underground storage tank systems within the next three years.[4]

In 1999, the Legislature created section 376.30714, F.S., to provide a mechanism for DEP to distinguish between old and new discharges which allows DEP to negotiate and enter into site-rehabilitation agreements with applicants at sites in which there is existing contamination and in which a new discharge occurs.

In 2005, the Legislature provided funding for limited interim soil source removals for sites eligible for state funding that upgrade their underground petroleum storage tanks to secondary containment in advance of the site's priority ranking for cleanup. This was done in an effort to expedite the required secondary containment upgrading of underground petroleum storage tanks in advance of the December 31, 2009 deadline due to owners or operators being reluctant to replace their tanks ahead of their priority ranking. Owners and operators are reluctant to replace tanks because treating the contaminated soil is expensive and the IPTF will not pay for such treatment out of priority order. As a result, the contaminated soil is often put back into the ground and cleanup occurs when the site's priority ranking comes due. However, even with the funding provisions enacted in 2005, many facility owners are still reluctant to upgrade their tanks early because their insurance carrier may cancel or refuse to renew their policies if they discover contamination and free product at the time of the upgrade, since it is difficult or impossible to distinguish between and "old discharge" that is eligible for state funding and the "new discharge" that the insurer must cover.

Effect of Proposed Change

The bill creates section 376.30716, F.S., relating to petroleum contamination. The bill provides the following two definitions relating to petroleum:

- "Exclusion zone" means the subsurface area within 10 feet of an underground storage tank, integral piping, and dispenser, and the area between the underground storage tank and dispenser.
- "Subsequently discovered discharge" means a discharge or suspected discharge on or after July 1, 2005, at a site eligible for state funding under ss. 376.305, 376.3071, or 376.3072, F.S.

Language in the bill acknowledges that it is difficult to distinguish between a discharge of petroleum products from a petroleum storage system which is eligible for state cleanup funding and which is not eligible for state cleanup funding. The bill stipulates that until a secondary containment upgrade of

[3] HB 1735 CS, 2005
[4] Id.

underground storage tanks is complete at a site, a subsequently discovered discharge at the site is presumed to be part of the original discharge that qualifies for state funding. However, the presumption does not apply:

- If the department presents competent and substantial evidence demonstrating that the subsequently discovered discharge occurred from a source that is independent and separate from the discharge that qualifies for state funding.
- To a site where petroleum storage systems have been upgraded, prior to July 1, 2005, to secondary containment in accordance with rule 62-761, F.A.C.
- To a site having newly discovered free product outside the exclusion zone.
- To a site having an increase in the concentration of existing petroleum contamination outside the exclusion zone of 1,000 percent or greater.
- To a site for which the department has, by a current valid order, determined that the discharge that is eligible for state funding has been cleaned up or no further action is necessary.

The bill exempts owners and operators of petroleum storage systems from section 376.30714, F.S., relating to DEP's negotiated agreements regarding "old discharges" and "new discharges" if the discharge is considered a subsequent discharge. The bill provides that DEP shall not, as part of a closure report or assessment for a site eligible for state funding, require soil or ground water sampling.

The bill provides that regardless of the discharge presumption provided in the bill:

- Owners or operators are required to report all incidents or discharges to DEP
- Owners or operators are to provide copies of all storage tank and piping tightness tests regardless of the results to DEP.

C. SECTION DIRECTORY:

Section 1 Creates section 376.30716, F.S., relating to subsequent petroleum discharges and eligibility for state funding.

Section 2 Provides the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: DEP reports the fiscal impact of this bill can be handled through the existing resources of the IPTF and will not require any additional appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that the bill would further encourage petroleum facilities to perform the secondary containment upgrading of underground petroleum storage tanks in advance of the December 31, 2009 deadline. The discovery of additional contamination that is folded into the existing state funded

discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY:

No additional rule making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to petroleum contamination; creating s. 376.30716, F.S.; providing definitions; creating a presumption regarding the source of a subsequently discovered discharge at certain petroleum contamination sites; providing exceptions to the application of the presumption; specifying that certain provisions concerning site rehabilitation agreements do not apply to a subsequently discovered discharge; prohibiting the Department of Environmental Protection from requiring soil or groundwater sampling relating to closure assessments at certain petroleum contamination sites; specifying responsibilities of a facility owner or operator; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 376.30716, Florida Statutes, is created to read:

376.30716 Cleanup of certain sites.--

(1) As used in this section, the term:

(a) "Exclusion zone" means the subsurface area within 10 feet of an underground storage tank, integral piping, and dispenser, and the area between the underground storage tank and dispenser.

(b) "Subsequently discovered discharge" means a discharge or suspected discharge that is discovered on or after July 1, 2005, at a site eligible for state funding under s. 376.305, s.

376.3071, or s. 376.3072.

(2) As noted in s. 376.30714, it may be difficult to distinguish between a discharge of petroleum products from a petroleum storage system which is eligible for state funding and a discharge reported after December 31, 1998, which is not eligible for state funding. Until the secondary containment upgrade of underground storage tanks, as required under rule 62-761, Florida Administrative Code, is complete at a site, a subsequently discovered discharge at the site is presumed to be part of the original discharge that qualifies for state funding. However, this presumption does not apply:

(a) If the department presents competent and substantial evidence demonstrating that the subsequently discovered discharge occurred from a source that is independent and separate from the discharge that qualifies for state funding.

(b) To a site where petroleum storage systems have been upgraded, prior to July 1, 2005, to secondary containment in accordance with rule 62-761, Florida Administrative Code.

(c) To a site having newly discovered free product outside the exclusion zone.

(d) To a site having an increase in the concentration of existing petroleum contamination outside the exclusion zone of 1,000 percent or greater.

(e) To a site for which the department has, by a current valid order, determined that the discharge that is eligible for state funding has been cleaned up or no further action is necessary.

(3) Section 376.30714 does not apply to a subsequently

discovered discharge. The department shall not, as part of a closure report or assessment for a site that is eligible for state funding under s. 376.305, s. 376.3071, or s. 376.3072, require soil or groundwater sampling.

(4) Regardless of whether the presumption specified in subsection (2) applies, a facility owner or operator shall:

(a) Report all incidents or discharges in accordance with rules of the department.

(b) Provide to the department a copy of all test results of storage tank and piping tightness regardless of the results.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1557 CS
SPONSOR(S): Brummer
TIED BILLS:

Wekiva Onsite Disposal System Compliance Grant Program

IDEN./SIM. BILLS: SB 1794

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Kliner	Kliner
2) Health Care Appropriations Committee	14 Y, 0 N, w/CS	Money	Massengale
3) State Resources Council		Kliner	Hamby
4)			
5)			

SUMMARY ANALYSIS

House Bill 1557 CS creates the Wekiva Onsite Disposal System Compliance Grant Program in the Department of Health (DOH). The program would provide grants of up to $10,000 per property to low-income property owners who are using onsite sewage treatment disposal systems in the Wekiva Study Area or the Wekiva River Protection Area. The purpose of the grant program is to assist the property owners in complying with rules developed by DOH, the Department of Environmental Protection (DEP), or the St. Johns Water Management District to enforce compliance with onsite disposal system standards.

The bill allows any property owner in the identified areas with an income less than or equal to 200 percent of the federal poverty guidelines to qualify for the grant to offset the cost of constructing, reconstructing, altering, repairing, or modifying any new or existing onsite disposal system to comply with adopted rules. The bill specifies that the grant is in the form of a rebate to the property owner for documented costs associated with complying with the adopted rules.

The bill also authorizes DOH to adopt rules for creating forms, implementing procedures, and establishing requirements for the application process and for disbursing grants under this bill and for documenting compliance costs incurred by the property owner; however, the rulemaking shall be suspended until the completion of the study.

The bill directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs. The bill directs DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs. Both agencies are to submit the reports to the President of the Senate and to the Speaker of the House before the start of the 2007 Regular Session.

The bill directs DOH to develop rules applying to the operation and maintenance of these systems in the Wekiva Study Area and the Wekiva River Protection Area, and at a minimum, requires each onsite sewage disposal and treatment system to be pumped out at least once every five years. The bill includes appropriations for the required studies.

The bill makes the grant program contingent on an appropriation in the General Appropriations Act. The bill appropriates $250,000 to DEP and $250,000 to DOH in General Revenue:

- So DEP can conduct the study of various sources of nitrogen into the Wekiva.
- So DOH can contract for the study of the effects of onsite systems on the Wekiva.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill creates a grant program in DOH that will increase workload and costs for DOH.

The bill directs DEP to conduct a study to determine the various sources of nitrogen in the specified area. In addition, the DOH is required to contract for a study to determine the effect of onsite systems on the Wekiva.

The bill provides property owners in the identified areas with an income less than or equal to 200 percent of the federal poverty guidelines to qualify for the grant to offset the cost of constructing, reconstructing, altering, repairing, or modifying any new or existing onsite disposal system.

Promote personal responsibility—The grant program is to assist certain property owners in defraying costs associated with updating, replacing, repairing, or replacing onsite waste disposal systems in the Wekiva River protection Area.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Federal Clean Water Act and Wastewater Discharge

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA)[1], established the basic framework for pollution control in the nation's water bodies. Its primary goal was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the CWA was intended to restore and protect the health of the nation's water bodies.

The CWA established the foundation for wastewater discharge control in the United States. According to the Environmental Protection Agency (EPA), the CWA's primary objective is to "restore and maintain the chemical, physical and biological integrity of the nation's waters."[2] The CWA established a control program for ensuring that communities have clean water by regulating the release of contaminants into our country's waterways. Permits that limit the amount of pollutants discharged are required of all municipal and industrial wastewater dischargers under the National Pollutant Discharge Elimination System (NPDES) permit program. In addition, a construction grants program was set up to assist publicly owned wastewater treatment works build the improvements required to meet these new limits.

According to the EPA, more than 75 percent of the nation's population is served by centralized wastewater collection and treatment systems. The remaining population uses septic or other onsite systems. Approximately 16,000 municipal wastewater treatment facilities are in operation nationwide. The CWA requires that municipal wastewater treatment plant discharges meet a minimum of 'secondary treatment.' More than 30 percent of the wastewater treatment facilities today produce cleaner discharges by providing even greater levels of treatment than secondary.

Central Wastewater Collection and Treatment[3]

The most common form of pollution control in the United States consists of a system of sewers and wastewater treatment plants. The sewers collect municipal wastewater from homes, businesses, and industries and deliver it to facilities for treatment before it is discharged to water bodies or land, or

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[1] Public Law 92-500

[2] http://www.epa.gov/owm/primer.pdf

[3] EPA primer on municipal systems at http://www.epa.gov/owm/primer.pdf

reused. Conventional wastewater collection systems transport sewage from homes or other sources by gravity flow through buried piping systems to a central treatment facility. These systems are usually reliable and consume no power. However, the slope requirements to maintain adequate flow by gravity may require deep excavations in hilly or flat terrain, as well as the addition of sewage pump stations, which can significantly increase the cost of conventional collection systems. Manholes and other sewer appurtenances also add substantial costs to conventional collection systems.

Cities began to install wastewater collection systems in the late nineteenth century because of an increasing awareness of waterborne disease and the popularity of indoor plumbing and flush toilets. In the year 2000, approximately 208 million people in the United States were served by centralized collection.

On-site Systems

Generally, septic systems are used to treat and dispose of relatively small volumes of wastewater, usually from houses and businesses that are located relatively close together. Septic systems are also called onsite wastewater treatment systems, decentralized wastewater treatment systems, on-lot systems, individual sewage disposal systems, cluster systems, package plants, and private sewage systems. Systems are considered "decentralized" because they do not involve central wastewater collection and treatment.

According to the EPA, the typical septic treatment system includes a septic tank, which digests organic matter and separates matter that floats (e.g., oils and grease) and settling solids from the wastewater. Soil-based systems discharge the liquid (effluent) from the septic tank into a series of perforated pipes buried in a leach field, leaching chambers, or other special units designed to slowly release the effluent into the soil or surface water, sometimes referred to as a drainage field.

Alternative systems use pumps or gravity to help septic tank effluent trickle through sand, organic matter (e.g., peat, sawdust), constructed wetlands, or other media to remove or neutralize pollutants like disease-causing pathogens, nitrogen, phosphorus, and other contaminants. Some alternative systems are designed to evaporate wastewater or disinfect it before it is discharged to the soil or surface waters.[4] The EPA developed guidelines to assist communities in establishing comprehensive management programs for onsite/decentralized wastewater systems to improve water quality and protect public health. The voluntary guidelines address the sensitivity of the environment in the community and the complexity of the system used. The five model management programs include:

- System inventory and awareness of maintenance needs.
- Management through maintenance contracts.
- Management through operating permits.
- Utility operation and maintenance.
- Utility ownership and management.[5]

According to the U.S. Census Bureau, approximately 26 million homes (one-fourth of all homes) in America are served by decentralized wastewater treatment systems. The Census Bureau reports that the distribution and density of septic systems vary widely by region and state, from a high of about 55 percent in Vermont to a low of around 10 percent in California. The New England states have the highest proportion of homes served by septic systems: New Hampshire and Maine both report that about one-half of all homes are served by individual systems. More than one-third of the homes in the southeastern states depend on these systems, including approximately 48 percent in North Carolina and about 40 percent in both Kentucky and South Carolina. More than 60 million people in the nation are served by septic systems. About one-third of all new development is served by septic or other decentralized treatment systems.[6] According to the Florida Department of Health, 31 percent of the

[4] http://cfpub2.epa.gov/owm/septic/home.cfm - Frequently Asked Questions
[5] http://www.epa.gov/owm/septic/pubs/septic_guidelines_factsheet.pdf
[6] http://cfpub2.epa.gov/owm/septic/faqs.cfm?program_id=70#358

Florida population is served by an estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment.[7]

In Florida, the effect of waste disposal, whether through an on-site system or a centralized system, will implicate laws relating to the Total Maximum Daily Load Program (TMDL), which describes the amount of each pollutant a water body can receive without violating state water quality standards.

TMDL Program

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the states until numerous lawsuits were filed by environmental groups.[8]

Currently, DEP develops and implements TMDLs through a watershed-based management approach that addresses the state's 52 major hydrologic basins into five groups. Each basin group is subject to a five phase TMDL cycle on a rotating basis. Phase 1 is a preliminary evaluation of the quality of a water body, phase two is monitoring and assessing to verify water quality impairments, phase 3 is the development and adoption of TMDLs for waters verified as impaired, phase 4 is the development of basin management action plans to achieve the TMDL, and phase 5 is the implementation of the plan and monitoring of results.

During the 2005 Legislative Session, the TMDL program was amended to authorize DEP to develop basin management action plans (BMAP) as part of the development and implementation of a TMDL for a water body. The law requires plans to integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL, restore designated uses of the water body, provide for phased implementation of strategies, establish a schedule for implementing strategies, establish a basis for evaluating the plan's effectiveness, identify feasible funding strategies, and equitably allocate pollutant reductions to basins as a whole or to each point or non-point source. The bill provides that plans may provide pollutant load reduction credits to pollution dischargers that have implemented strategies to reduce pollutant loads.[9]

The law creates incentives to participate in the BMAP process and establishes a more direct linkage between the actions specified in the BMAP and activities regulated by DEP. Consistent with the existing provisions in s. 403.067, F.S., non-point sources are still managed through a non-regulatory, incentive-based program. However, in order to promote the same predictable pollution reduction performance among non-regulated entities as exists for permitted entities, the law provides the following:

- Non-regulated activities are not eligible for the incentives associated with the presumption of compliance with state water quality standards and the waiver of liability for pollution if adopted best management practices are not properly and timely implemented.
- Non-regulated activities that choose not to implement adopted best management practices must demonstrate compliance with applicable water quality standards.
- DEP is authorized to take enforcement actions where a party fails to properly implement best management practices or provide data demonstrating compliance with water quality standards.

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[7] http://www.doh.state.fl.us/environment/ostds/intro.htm

[8] Florida implements the TMDL program in s. 403.067, Florida Statutes.

[9] House of Representatives State Resources Council Staff Analysis for CS/HB 1839, 2005 Regular Session

The Wekiva River Basin
The Wekiva Basin, consisting of the Wekiva River, the St. Johns River, and their tributaries, along with associated lands in central Florida, is part of a wildlife corridor that connects northwest Orange County with the Ocala National Forest. The Wekiva River and its tributaries have been designated an Outstanding Florida Water, a National and Scenic River, a Florida Wild and Scenic River, and a Florida Aquatic Preserve. The river is a spring-fed system associated with 19 springs that are connected to the Florida Aquifer. Eleven of these springs are second and third magnitude springs, meaning those springs discharge 10 to 100 cubic feet of water per second or 1 to 10 cubic feet of water per second, respectively.

The Wekiva Basin Area Task Force
On September 26, 2002, Governor Bush established the "Wekiva Basin Area Task Force" to balance the transportation needs associated with this projected growth and protection of the Wekiva Basin.[10] The task force was charged with evaluating and providing recommendations for appropriate highway routes connecting State Road 429 to Interstate 4 (while providing the greatest protection to the Wekiva Basin), in addition to evaluating and providing recommendations for the potential expansion of roads and corridors within the Wekiva Basin. The task force was charged with considering, among other issues, land acquisition, springshed protection, innovative road design, protection of rural character, protection of habitat, utilization of financial resources, and the adequacy of local governments relating to transportation corridors.[11] The task force completed its work in 2003, and provided over a dozen recommendations in its final report. Legislation to implement the task force's recommendations was considered during the 2003 Legislative Session, but did not pass.[12]

The Wekiva Parkway and Protection Act of 2004 (Ch. 2004-384, L.O.F.)
On July 1, 2003, Governor Bush issued Executive Order No. 03-112, creating a 28-member Wekiva River Basin Coordinating Committee. Membership of the committee included the Commissioner of Agriculture, the Secretaries of the Department of Community Affairs, the Department of Environmental Protection, and the Department of Transportation, the Executive Directors of the St. Johns River Water Management District (SJRWMD), the Florida Fish and Wildlife Conservation Commission, and the East Central Florida Regional Planning Council. The committee also included eight appointed individuals with balanced representation from citizen groups, the agricultural community, property owners, and environmental or conservation organizations.

The committee was charged with considering the recommendations of the Wekiva Basin Area Task Force, and to consider the use of innovative planning and development strategies, such as rural land stewardship and other mechanisms for concentrating development in appropriate areas, and the use of the latest science-based information and methods, performance-based-planning strategies, and development standards. In addition, the committee was to address issues of compatibility with the existing comprehensive plans and land development regulations of those local governments with jurisdiction over lands located within the Wekiva River Protection Area.[13]

The Wekiva River Basin Coordinating Committee issued its final report on March 16, 2004. The committee's recommendations were adopted and passed into law (chapter 2004-384, Laws of Florida). The law created part III of chapter 369, F.S., consisting of s. 369.314-369.324, F.S., as the Wekiva Parkway and Protection Act. Some of the major provisions of the law include:

- Statements of legislative findings and intent.
- A legal description of the Wekiva Study Area, including the majority of the land within the Wekiva Study Area which contributes groundwater recharge to the Wekiva River and springs

[10] See Executive Order No. 2002-259.
[11] Wekiva Basin Area Task Force, Final Report: Recommendations for Planning and Locating the Wekiva Parkway While Preserving the Wekiva River Basin Ecosystem, January 15, 2003. See links at http://www.dca.state.fl.us/fdcp/dcp/wekiva/wekivatf/index.cfm
[12] CS/SB 1956 passed the Senate, however, HB 1333 died in committee.
[13] Executive Order Number 03-112, July 1, 2003, may be found at http://www.dep.state.fl.us/secretary/news/2003/july/0701_eo.htm

(counties and municipalities located within the Wekiva Study Area include: Lake County and the municipalities of Eustis and Mount Dora; Orange County and the municipalities of Apopka, Eatonville, Maitland, Oakland, Ocoee, Orlando and Winter Garden; and Seminole County and the municipalities of Lake Mary, Longwood and Altamonte Springs).
- Guiding principles for the Wekiva Parkway Design Features and Construction.
- A requirement that the Department of Transportation (DOT), the Department of Environmental Protection (DEP), the St. Johns River Water Management District, the Orlando-Orange County Expressway Authority, and other land acquisition entities cooperate and establish funding responsibilities and partnerships by agreement, to the extent funds are available to the various entities, to develop the Wekiva Study Area.
- A requirement that DOT, subject to an appropriation by the Legislature, purchase lands in the Wekiva Study Area necessary for the construction of the Wekiva Parkway and the preservation of environmentally sensitive lands.
- Requirements for several studies and rule making related to the development and protection of the Wekiva Study Area, including looking at methods to reduce nitrates from leeching into the watershed from onsite sewage treatment and disposal systems.

Wekiva Basin Onsite Sewage Treatment and Disposal System Study

Within the Wekiva Parkway and Protection Act, several studies are listed. One of the studies required DOH, in consultation with DEP, to study the efficacy and applicability of onsite disposal system standards needed to achieve nitrogen reductions protective of groundwater quality within the Wekiva Study Area including publicly owned lands and report to the Governor and the Department of Community Affairs. The Department of Health published the Wekiva Basin Onsite Sewage Treatment and Disposal System Study report on December 1, 2004.[14]

The study found that the Wekiva Study Area is underlaid by a karst geology characterized by limestone or dolostone bedrock with caves and springs. The report states that onsite sewage treatment and disposal systems have been used for many years as a relatively low maintenance, low cost method of safely treating and disposing of human waste, and that there are an estimated 87,000 septic tanks used for onsite sewage disposal by property owners in the Wekiva Study Area. The typical, conventional onsite sewage treatment and disposal system consists of a septic tank distribution piping, and drainfield.[15] The treatment process begins in the septic tank. The septic tank is designed to skim off fats, oils, and greases; settle out the larger solids; and partially treat the sewage through breakdown by anaerobic bacteria. The waste then leaves the tank through the distribution piping and is distributed into the soil by the drainfield. Unsaturated soil surrounding the drainfield is extremely effective at removing disease-causing viruses, bacteria, and parasites.

The study concluded that in areas where development densities are low, the overall costs of onsite sewage treatment and disposal systems are less than a central sewer system and that onsite sewage treatment and disposal systems can provide protection of the environment and the public health that is comparable to a central sewer system.[16]

Based on these findings, DOH provided the following recommendations:

- Set a discharge limit of 10 milligrams per liter of total nitrogen for new systems, systems being modified, and for existing systems in the primary and secondary Wekiva Study Area protection zones.

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[14] http://www.doh.state.fl.us/environment/ostds/wekiva/wekivastudyrtp.pdf

[15] According to the report, a family of four will discharge approximately 25 pounds of nitrogen per year into the drainfield of a conventional onsite sewage treatment and disposal system. A conventional system costs from $5,500 to $7,500. A comparable system that also reduces nitrates costs from $7,500 to $9,000.

[16] The report considered utilizing a more stringent level of wastewater treatment, including, but not limited to, the use of multiple tanks to combine aerobic and anaerobic treatment to reduce the level of nitrates.

- Prohibit the land spreading of septage (raw, untreated solids and liquids) and grease trap waste in the Wekiva Study Area. Septage waste would be required to be disposed of at wastewater treatment plants.
- Evaluate the economic feasibility of sewering versus nutrient removal upgrades to existing onsite sewage treatment and disposal systems. A phased-in approach to replacing the remaining existing systems should be developed with a target completion date of 2010.
- Establish new regional wastewater management entities or modify existing ones to oversee the maintenance of all wastewater discharged from onsite sewage treatment and disposal systems in the study area. These programs should take the privatization approach and contract with existing licensed septic tank contractors.

Proposed Rule 64E-6.001

In June 2005, based on the recommendations of the Wekiva Basin Onsite Sewage Treatment and Disposal System Study, DOH proposed a rule to limit nitrogen input from onsite sewage treatment and disposal systems within the Wekiva Study Area to 10 mg/L. The rule language was modified and republished in November 2005. The proposed rule came under considerable opposition from those who questioned the findings and recommendations in the study, including property owners and builders. Specifically, stakeholders raised concerns whether sufficient data exists on the extent to which onsite sewage treatment and disposal systems directly contribute to increased nitrogen levels in the Wekiva watershed. Based on the lack of a causal link between the systems and nitrogen levels, they argue that the cost of upgrading or replacing conventional systems is not justified.

Further, in a letter dated March 1, 2006, the chair of DOH's Technical Review and Advisory Panel (TRAP)[17] reported that the proposed rule could affect up to 55,000 existing homes and any new construction in the Wekiva Study Area. TRAP estimates that the cost of installing a nitrogen reduction system could be up to $15,000 per household, and a capital/operating/maintenance cost of $189 a month. In the letter, the TRAP panel made the following comments and recommendations regarding the Wekiva and OSTDS:

- The Legislature should appropriate the necessary monies to fund a study to be conducted by the state to identify and quantify the various sources of nitrogen within the Wekiva Study Area (as it is typically done in determining appropriate solutions) and to identify cost-effective options for reducing source impacts. In this regard, the TRAP voted to support legislation during the 2006 legislative session to achieve funding for such outcomes.
- Suggested to the Department of Health to bring back a model proposal for a statewide operation and maintenance program for OSTDS.
- Expressed support for a mandatory once every 5-years pump out of all OSTDS within the Wekiva Study Area and upgrading of all failing systems to present standards if state monies were made available for such upgrades.
- Agreed to assemble a work group to come up with other recommendations or alternatives for improvements in OSTDS that could result in overall reduction of nitrogen from these systems.

Federal Poverty Threshold

There are two slightly different versions of the federal poverty measure:

- The poverty thresholds, and
- The poverty guidelines.

The poverty thresholds are the original version of the federal poverty measure. They are updated each year by the Census Bureau. The thresholds are used mainly for statistical purposes — for instance,

[17] The Technical Review and Advisory Panel (TRAP) is established in s. 381.0068, F.S., for the purpose of assisting DOH in rulemaking and decision making that affects the regulation, location, and technology of onsite sewage treatment and disposal systems in Florida.

preparing estimates of the number of Americans in poverty each year. (In other words, all official poverty population figures are calculated using the poverty thresholds, not the guidelines.) Poverty thresholds since 1980 and weighted average poverty thresholds since 1959 are available on the Census Bureau's Web site.

The poverty guidelines are the other version of the federal poverty measure. They are issued each year in the Federal Register by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds for use for administrative purposes — for instance, determining financial eligibility for certain federal programs.[18]

2005 HHS Poverty Guidelines

Persons in Family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	$ 9,570	$11,950	$11,010
2	12,830	16,030	14,760
3	16,090	20,110	18,510
4	19,350	24,190	22,260
5	22,610	28,270	26,010
6	25,870	32,350	29,760
7	29,130	36,430	33,510
8	32,390	40,510	37,260
For each additional person, add	3,260	4,080	3,750

SOURCE: *Federal Register*, Vol. 70, No. 33, February 18, 2005, pp. 8373-8375.

Effects of Proposed Changes

This bill creates the Wekiva Onsite Disposal System Compliance Grant Program in the Department of Health (DOH). The program would provide grants of up to $10,000 per property to low-income property owners who are using onsite sewage treatment disposal systems in the Wekiva Study Area or the Wekiva River Protection Area. The purpose of the grant program is to assist the property owners in complying with rules developed by DOH, the Department of Environmental Protection (DEP), or the St. Johns Water Management District to enforce compliance with onsite disposal system standards.

The grant program is contingent onan appropriation in the General Appropriations Act.

The bill allows any property owner in the identified areas with an income less than or equal to 200 percent of the federal poverty guidelines to qualify for the grant to offset the cost of constructing, reconstructing, altering, repairing, or modifying any new or existing onsite disposal system to comply with adopted rules. The bill specifies that the grant is in the form of a rebate to the property owner for documented costs associated with complying with the adopted rules.

[18] http://aspe.hhs.gov/poverty/05poverty.shtml The poverty guidelines are sometimes loosely referred to as the "federal poverty level" (FPL), but that phrase is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.

The bill also authorizes DOH to adopt rules for creating forms, implementing procedures, and establishing requirements for the application process and for disbursing grants under this bill and for documenting compliance costs incurred by the property owner; however, the rulemaking shall be suspended until the completion of the study.

The bill directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs. The bill directs DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs. Both agencies are to submit the reports to the President of the Senate and to the Speaker of the House before the start of the 2007 Regular Session.

The bill directs DOH to develop rules applying to the operation and maintenance of these systems in the Wekiva Study Area and the Wekiva River Protection Area, and at a minimum, requires each onsite sewage disposal and treatment system to be pumped out at least once every five years. The amendment includes appropriations for the provision and administration of grants under the program and appropriations for the studies required under this amendment.

The bill appropriates $250,000 to DEP and $250,000 to DOH in General Revenue:

- So DEP can conduct the study of various sources of nitrogen into the Wekiva.
- So DOH can contract for the study of the effects of onsite systems on the Wekiva.

C. SECTION DIRECTORY:

Section 1. Creates the Wekiva Onsite Disposal System Compliance Grant Program in DOH; makes implementation subject to an appropriation.

Section 2. Directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs; directs DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs; requires the agencies to submit their reports to the resident of the Senate and the Speaker of the House prior to the 2007 Regular Session; directs DOH to develop rules for a model proposal applying to operation and maintenance of onsite systems.

Section 3. Provides appropriations to DEP and DOH for respective studies.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

DOH	FY 06-07	FY 07-08
	$1.896 million	$1.895 million

DOH reports it requires an Environmental Health Program Consultant (SES Pay Grade 425) to administer the program. The base bi-weekly salary for this position would be $1,640.55 (or a base of $42,654.30 annually), with benefits. To administer the grant program there would be recurring costs including application reviews, grant disbursements, mailing, and travel.

The anticipated amount needed for the grant program is based on the current number of repair permits annually in the Wekiva Study Area (583) and percentage of Orange County residents at 200 percent of the federal poverty guidelines from the 2000 census (31.1 percent) for a total of 182 grants per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Low-income private property owners' costs associated with installing new or modifying existing onsite sewage treatment and disposal systems would be offset by a grant award.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DOH to adopt rules providing forms, procedures and requirements for applying for grants, and to adopt rules for the department to disburse funds and to document compliance costs, and to develop a model proposal relating to onsite system maintenance and operation owner; however, the rulemaking shall be suspended until the completion of the study.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Health Care Appropriations Committee approved three amendments from the bill's sponsor. The amendments:

- Makes the Wekiva Onsite Sewage Treatment and Disposal Compliance System Grant Program contingent on an appropriation in the General Appropriations Act.
- Suspends rule making authority provided to the DOH to adopt rules providing forms, procedures and requirements for applying for grants; to adopt rules for the department to disburse funds; to document compliance costs; and, to develop a model proposal relating to onsite system maintenance and operation owner until after the study is completed.
- The bill appropriates $250,000 to DEP and $250,000 to DOH in General Revenue:
  So DEP can conduct the study of various sources of nitrogen into the Wekiva.
  So DOH can contract for the study of the effects of onsite systems on the Wekiva.

On March 29, 2006, the Committee on Environmental Regulation approved one strike all amendment from the bill's sponsor. The difference between the bill as drafted and the strike all is as follows:

- The bill directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs.
- The bill directs the DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs.
- The bill directs DOH to develop rules applying to the operation and maintenance of these systems in the Wekiva Study Area and the Wekiva River Protection Area, and at a minimum, requires each onsite sewage disposal and treatment system to be pumped out at least once every five years.
- The bill appropriates an unspecified amount from General Revenue to DEP to conduct the study of various sources of nitrogen into the Wekiva, and to DOH to contract for the study of the effects of onsite systems on the Wekiva.

CHAMBER ACTION

The Health Care Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Wekiva Onsite Sewage Treatment and Disposal System Compliance Grant Program; creating the program in the Department of Health; providing purposes; authorizing certain property owners in certain areas of the Wekiva basin to apply for grants for certain purposes; providing grant limitations; providing for annual adjustments of the amount of the grants; providing for the grant as a rebate of costs incurred; requiring documentation of costs; requiring the Department of Health to adopt rules to administer the grant program; specifying implementation as contingent upon appropriation; requiring the Department of Environmental Protection to conduct a study of sources of nitrogen input into the Wekiva River and associated springs; requiring the Department of Health to contract for an independent study of sources of nitrogen input from onsite sewage treatment and disposal systems into the Wekiva River and associated springs;

requiring reports; providing report requirements; suspending certain department rulemaking until study completion; requiring the Department of Environmental Protection and Department of Health to submit copies of the reports to the Legislature; requiring the Department of Health to develop proposed rules for a model proposal applying to operation and maintenance of onsite sewage treatment and disposal systems in certain areas; specifying a rule criterion; providing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Wekiva Onsite Sewage Treatment and Disposal System Compliance Grant Program.--

(1) The Wekiva Onsite Sewage Treatment and Disposal System Compliance Grant Program is created within the Department of Health, to be administered by the Department of Health. The purpose of the program is to provide grants to low-income property owners in the Wekiva Study Area or the Wekiva River Protection Area using onsite sewage treatment and disposal systems to assist the property owner in complying with rules for onsite sewage treatment and disposal systems developed by the Department of Health, the Department of Environmental Protection, or the St. Johns River Water Management District to enforce compliance with onsite sewage treatment and disposal system standards.

(2) Any property owner in the Wekiva Study Area or the Wekiva River Protection Area having an income less than or equal to 200 percent of the federal poverty guideline who is required by rule of the Department of Health, the Department of Environmental Protection, or the St. Johns River Water Management District to construct, reconstruct, alter, repair, or modify any new or existing onsite sewage treatment and disposal system on such property may apply to the Department of Health for a grant to assist the owner with the cost of compliance.

(3) The amount of the grant is limited to $10,000 per property and shall be increased each calendar year by the change in the annual average of the "materials and components for construction" series of the producer price index, as calculated and published by the United States Department of Labor, Bureau of Statistics, from the previous calendar year.

(4) The grant shall be in the form of a rebate to the property owner for costs incurred in complying with requirements for onsite sewage treatment and disposal systems. The property owner shall provide to the Department of Health in the application for a grant documentation of costs incurred in complying with requirements for such systems.

(5) The Department of Health shall adopt rules pursuant to ss. 120.536(1) and 120.54 providing forms, procedures, and requirements for applying for and disbursing grants under this section and for documenting compliance costs incurred.

(6) Implementation of this section is contingent upon an appropriation in the General Appropriations Act.

Section 2. (1)(a) The Department of Environmental Protection shall conduct a study to determine the various sources of nitrogen input into the Wekiva River and associated springs contributing water to the river. The Department of Environmental Protection shall prepare a report recommending actions to be taken by the Department of Environmental Protection and the St. Johns Water Management District that will provide the best use of economic resources to reduce nitrogen inputs into the river and associated springs.

(b) The Department of Health shall contract for a study by an independent entity of sources of input of nitrogen from onsite sewage treatment and disposal systems into the Wekiva River and associated springs. The study shall measure the concentration of nitrates in the soil 10 feet and 20 feet below the drainage field of the onsite sewage treatment and disposal systems. The contract shall require the entity to submit a report to the Department of Health describing the locations of such sources and amounts contributed by such sources and containing recommendations to reduce or eliminate nitrogen inputs from such sources. Rulemaking required by s. 369.318(2), Florida Statutes, shall be suspended until the completion of this study.

(c) The Department of Environmental Protection and the Department of Health shall submit copies of the reports to the President of the Senate and the Speaker of the House of Representatives before the 2007 Regular Session of the Legislature.

(2) The Department of Health shall develop proposed rules for a model proposal applying to operation and maintenance of onsite sewage treatment and disposal systems within the Wekiva Study Area or the Wekiva River Protection Area. At a minimum, the rules shall require each property owner in the Wekiva Study Area or the Wekiva River Protection Area having an onsite sewage treatment and disposal system to pump out the system at least once every 5 years.

Section 3. (1) The sum of $250,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the 2006-2007 fiscal year to be used by the Department of Environmental Protection to conduct the study required under paragraph (1)(a) of section 2.

(2) The sum of $250,000 is appropriated from the General Revenue Fund to the Department of Health for the 2006-2007 fiscal year to be used for purposes of the independent study the Department of Health is required to contract for under paragraph (1)(b) of section 2.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7133 CS PCB ENVR 06-05 Solid Waste
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
1) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Dixon	Dixon
2) State Resources Council		Kliner	Hamby
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and addresses other issues which have arisen since the last major rewrite of the Solid Waste Management Act (SWMA). For instance, the bill:

- Deletes obsolete definitions, and alphabetizes and consolidates remaining definitions
- Deletes obsolete language relating to Class II landfills and compost standards
- Clarifies the circumstances under which industrial byproducts are not regulated under the SWMA
- Deletes provisions relating to biomedical incinerators
- Provides for the management of storm-generated debris.

The bill also proposes numerous amendments relating to the regulation of hazardous waste, for instance:

- Extends the duration of certain solid and hazardous waste research, development, and demonstration permits
- Deletes a requirement for a separate report on hazardous waste management
- Authorizes the DEP to issue authorizations which include both permits and clean closure orders for hazardous waste facilities
- Clarifies the provisions relating to the posting of signs on certain properties contaminated by hazardous wastes
- Allows the DEP to issue orders requiring the prompt abatement of an imminent hazard caused by a hazardous substance
- Reduces the local match requirement for local governments in order to receive certain hazardous waste collection grants, and provides exceptions from the match requirement.

Further, the bill adjusts the criteria for the water projects grant program.

See Part I.B., EFFECT OF PROPOSED CHANGES, for a complete list of changes proposed by the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The Department of Environmental Protection will no longer be required to submit separate reports regarding hazardous waste management and used oil. This information will be consolidated in the department's Solid Waste Management in Florida report, thereby potentially saving personnel time and publication costs.

In order to be eligible to receive a hazardous waste collection grant, local governments currently must match the entire grant amount. This bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This may permit more local governments to take advantage of this grant program.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Solid Waste Management Act (SWMA) was enacted in 1988 to provide comprehensive programs to promote recycling and reduce the volume of materials going to landfills. The SWMA mandated waste minimization, conservation of landfill space, litter control, and recycling and required the involvement and cooperation of Florida's residents, businesses, and visitors. Several state agencies were given responsibilities under SWMA with the Department of Environmental Regulation having the lead responsibility for developing the state program, adopting all regulations and standards, permitting facilities, and managing biohazardous waste.

A major provision of the SWMA required all counties to initiate recycling programs to separate and offer for recycling a majority of aluminum cans, glass, newspaper, and plastic bottles.

As part of their recycling programs, local governments were encouraged to separate all plastics, metals, and all grades of paper for recycling prior to final disposal and were also encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

Counties were required to achieve a waste reduction goal of 30 percent by 1994. No more than one-half of the goal could be met with yard trash, white goods (primarily discarded appliances), construction and demolition (C&D) debris, and tires. The goal could be modified or reduced for any county that demonstrated it would have an adverse impact on the financial obligations of the county regarding waste to energy facilities (WTE).

To assist the counties in their recycling efforts, the SWMA established certain grant programs. The types of grants available included small county grants, recycling and education grants, waste tire grants, and litter and marine debris prevention grants.

The SWMA also provided for a waste newsprint fee, a waste tire fee, and the implementation of an advance disposal fee if certain recycling conditions were not met.

The Solid Waste Management Trust Fund (SWMTF) was created to fund solid waste management activities.

In 1993, the SWMA was significantly rewritten to update and refine the act. Major features of this rewrite included:

- Creating the Recycling Markets Advisory Committee in the Department of Commerce.[1]
- Providing significant new provisions relating to the advance disposal fee and statewide litter program. Initially, the advanced disposal fee was 1 cent per container with an increase to 2 cents on January 1, 1995. The estimated proceeds of the fee ($22 million) were deposited into the SWMTF to be used to supplement recycling grants, Surface Water Improvement and Management or SWIM program, Sewage Treatment Revolving Loan, and Small Community Sewer Construction Assistance. The advance disposal fee and the waste newsprint fee provisions expired on October 1, 1995, as provided in ch. 88-130, Laws of Florida.
- Providing new requirements for permitting WTE facilities and commercial hazardous waste incinerators in the state. No commercial hazardous waste incinerator may be permitted or certified in the state without a certificate of need, issued by the Governor and Cabinet, sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board.
- Establishing the Florida Packaging Council and creating a comprehensive litter and marine debris control and prevention program.
- Providing assistance to smaller counties to aid in meeting their waste reduction and recycling responsibilities.
- Providing for the ownership of solid waste and flow control.
- Providing for the disposal of certain batteries.
- Allowing the SWMTF to be used to fund projects relating to market development for recycled materials.
- Allowing counties of less than 50,000 to be eligible for annual solid waste grants of $50,000.

Another significant revision to the SWMA occurred in 1996 when the provisions relating to construction and demolition (C&D) debris were substantially revised. These provisions included requiring the Department of Environmental Protection (DEP) to establish a separate category for solid waste management facilities which accept only C&D debris for disposal or recycling; and providing that the DEP may not require liners and leachate collection systems at individual facilities unless it demonstrates that the facility is reasonably expected to result in violations of ground water standards. A permit is not required for disposal of C&D debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

For several years, approximately $30 million was appropriated annually from the SWMTF and used for water quality and restoration projects. As a result, the Legislature in 2002 provided for the permanent reallocation of the sales tax proceeds that were being deposited into the SWMTF. These funds (approximately $30 M annually) are now deposited into the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects. The SWMTF is now funded almost exclusively from the waste disposal fees imposed on tires purchased at retail. This fee generates approximately $19 million annually and supports not only the grants program, but also the general solid waste activities of the Division of Waste Management.

Also, the counties are no longer required to annually submit to the DEP certain solid waste and recycling information. Instead, the DEP may periodically seek the information from the counties to evaluate and report on the success of meeting the solid waste reduction goal.

Counties must still implement a recyclable materials recycling program; however, the counties are no longer required to recover a majority of the minimum five. Instead, they are encouraged to recover a significant portion of at least four of the following materials: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.

[1] The Department of Commerce was abolished in 1996 pursuant to ch. 96-320, L.O.F.

The 2002 revisions to the SWMA also:

- Deleted specific language regarding the amount of C&D debris, yard trash, white goods, and tires that may be considered when determining the 30 percent waste reduction goal.
- Redefined "small county" from 75,000 to 100,000 for purposes of providing an opportunity to recycle in lieu of achieving the 30-percent goal.
- Required C&D debris to be separated from the solid waste stream in separate locations at a solid waste disposal facility or other permitted site.
- Refocused the purposes of the SWMTF toward the core solid waste management responsibilities of the DEP and created a new competitive and innovative solid waste management grant program. It also maintained funding for the mosquito control activities in Department of Agriculture and Consumer Services (DACS).
- Redistributed the funds in the SWMTF
  - Up to 40 percent for funding solid waste activities of the DEP and other state agencies.
  - Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
  - Up to 11 percent to DACS for mosquito control.
  - A minimum of 40 percent for funding a competitive and innovative grant program relating to recycling and reducing the volume of municipal solid waste, including waste tires requiring final disposal.

- Provided for the distribution of the available solid waste management grants funds:
  - Up to 15 percent for the competitive and innovative grant program.
  - Up to 35 percent for the consolidated grant program for small counties.
  - Up to 50 percent for the waste tire program.

- Directed DEP to use the $30 million annually transferred from the sales tax proceeds to the Ecosystem Management and Restoration TF for projects to improve water quality and restore lakes and rivers impacted by pollution. At least 20 percent of the funds available are to be used for projects that assist financially disadvantaged small local governments.

The most recent revisions to the SWMA were made in 2005 and included the following:

- Prior to the construction of a new WTE facility or the expansion of an existing WTE, the county must implement and maintain a solid waste management and recycling program designed to meet the 30 percent waste reduction goal. If a WTE is built in a county with a population of less than 100,000 that county would have to have a program designed to achieve the 30 percent waste reduction goal, and not just provide the opportunity to recycle.
- Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider the construction of a WTE facility as an alternative to additional landfill space.
- Clarified that local governmental entities are required to pay the waste tire fee and the lead-acid battery fee.
- Increased the penalty for a litter violation from $50 to $100. The $50 increase is to be deposited into the SWMTF to be used for the solid waste management grant program.
- Provided for a pilot project to encourage the reuse or recycling of campaign signs. The recovered campaign signs are to be made available to schools and other entities that may have a use for them, at no cost.

The last time the Solid Waste Management Act was substantially rewritten was in 1993. Although there have been several amendments to the statutory provisions since that time, these amendments have been piecemeal and the issues have not been addressed in a comprehensive manner. In the past few

years, issues have arisen regarding recycling and disposal of vegetative and construction and demolition debris. This problem has been exacerbated by the fact that Florida was hit with four major hurricanes in 2004 and by Hurricanes Dennis, Katrina, and Wilma in 2005.

The solid waste provisions in the statutes contain several provisions that need to updated to delete obsolete provisions and dates that have expired. Some provisions have never been used and certain provisions are no longer needed.

The Senate Environmental Preservation Committee was assigned an interim project to review the Solid Waste Management Act and make recommendations to the Legislature to update the act and make recommendations to address issues that have recently arisen.

Effect of Proposed Changes

This bill would implement the recommendations of the Senate Environmental Preservation Committee's interim report no. 2006-121, Review of the Solid Waste Management Act. The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and address other issues which have arisen since the last major rewrite of the Solid Waste Management Act. Specifically, the bill:

- Deletes the provisions relating to Keep Florida Beautiful, Inc., and transfers the Wildflower Advisory Council that was created within Keep Florida Beautiful to the Department of Agriculture and Consumer Services (DACS). Provides that the use fees from the sale of the Wildflower license, and transfers the unexpended proceeds from the Wildflower license plates which are held by Keep Florida Beautiful to the DACS.
- Places the Adopt-a-Shore Program that was created within Keep Florida Beautiful in the Department of Environmental Protection (DEP).
- Alphabetizes the definitions used in the Solid Waste Management Act. Deletes obsolete definitions and consolidates definitions that are found elsewhere in the act.
- Deletes obsolete language relating to Class II landfills and compost standards.
- Clarifies the circumstances under which industrial byproducts are not regulated under the Solid Waste Management Act.
- Deletes provisions relating to biomedical incinerators.
- Provides for the management of storm-generated debris.
- Deletes the specific percentage allocations for the use of the funds in the Solid Waste Management Trust Fund.
- Places time restrictions on certain liens imposed by the DEP.
- Provides that escrow accounts may only be used by government-owned solid waste facilities to meet the financial requirements for closure. Provides for grandfathering of certain facilities.
- Deletes the provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities.
- Revises the definition of "waste tire" and "waste tire processing facility."
- Exempts certain tire businesses from having to obtain a tire storage permit.
- Extends the duration of certain solid and hazardous waste research, development, and demonstration permits.
- Deletes a requirement for a separate report on hazardous waste management.
- Authorizes the DEP to issue authorizations which include both permits and clean closure orders for hazardous waste facilities.
- Clarifies the provisions relating to the posting of signs on certain properties contaminated by hazardous wastes.
- Allows the DEP to issue orders requiring the prompt abatement of an imminent hazard caused by a hazardous substance.
- Reduces the local match requirement for local governments in order to receive certain hazardous waste collection grants, and provides exceptions from the match requirement.

- Repeals a provision relating to the submission of certain solid waste facility construction and operation plans.
- Repeals the requirement for a separate used oil report.
- Repeals the provisions relating to the Multipurpose Hazardous Waste Facility Siting Act.
- Changes the criteria for the water projects grant program.

C. SECTION DIRECTORY:

This bill would implement the recommendations of the Senate Environmental Preservation Committee's interim report no. 2006-121, Review of the Solid Waste Management Act. The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and address other issues which have arisen since the last major rewrite of the Solid Waste Management Act.

Section 1. Section 403.413, F.S., is amended to clarify who is liable for dumping under the litter law.

Section 2. Section 403.4131, F.S., is amended to delete the statutory provisions relating to Keep Florida Beautiful, Inc. The Wildflower Advisory Council that was created within Keep Florida Beautiful, Inc. is recreated within the Department of Agriculture and Consumer Services (DACS). The Council membership is increased from nine members to ten members to include a representative of the DACS. The Council will be advisory to the DACS and shall develop procedures of operation, research contracts, educational and marketing programs, and wildflower planting grants for Florida native wildflowers, plants, and grasses. The Council shall also make recommendations to the DACS concerning what constitutes acceptable species of wildflowers and other plants supported by these programs.

Section 3. Section 403.41315, F.S., is amended to conform to the changes in s. 403.4135, F.S., relating to Keep Florida Beautiful, Inc.

Section 4. Section 403.4133, F.S., is amended to place the Adopt-a-Shore Program that was created within Keep Florida Beautiful, Inc. in the Department of Environmental Protection.

Section 5. Section 320.08058, F.S., is amended to provide that the annual use fees from the sale of the Wildflower license plates shall now be distributed to the DACS.

Section 6. All unexpended proceeds of the fees paid for the Wildflower license plates which are held by Keep Florida Beautiful, Inc. must be transferred to the DACS promptly after the effective date of this act.

Section 7. Section 403.703, F.S., is amended to place the definitions used in the Solid Waste Management Act in alphabetical order. In addition, the following definitions are also amended: "clean debris", "closure", and "yard trash." The following definitions are deleted: "biomedical waste generator" and "palletized paper waste"; and the definition of "landfill" is moved from s. 403.7125, F.S.

Section 8. Subsection (69) of section 316.003, F.S., is amended to correct a statutory cross reference.

Section 9. Paragraph (f) of subsection (2) of section 377.709, F.S., is amended to correct a statutory cross reference.

Section 10. Subsection (1) of section 487.048, F.S., is amended to correct a statutory cross reference.

Section 11. Section 403.704, F.S., is amended to delete certain obsolete language and dates relating to the Department of Environmental Protection's (DEP) powers and duties. Such provisions include:

- Holding public hearings to develop rules to implement the state's solid waste management program. This is obsolete because rulemaking provisions of s. 120.54, F.S., include workshops and hearings.
- Charging certain fees for certain solid waste management services. The DEP does not provide solid waste management services.
- Acquiring personal or real property for the purpose of providing sites for solid waste management facilities. The DEP does not provide sites for solid waste management facilities.
- Receiving funds from the sale of certain products, materials, fuel, or energy from any state-owned or operated solid waste facility. The DEP does not operate solid waste management facilities.
- Deleting certain requirements for Class II landfills. There are no longer Class II landfills being permitted in Florida.
- Conducting solid waste research to be used in the implementation of certain landfill closure rules. Landfill closure methods have been developed and the rules have been in place for nearly 20 years.
- Authorizing variances from the solid waste closure rules. Variances are already allowed under s. 403.201, F.S., and s. 120.54, F.S., for any solid waste rule, not just closure rules.

Section 12. Section 403.7043, F.S., is amended to delete obsolete language relating to compost standards rulemaking.

Section 13. Section 403.7045, F.S., is amended to clarify that industrial byproducts are not regulated under the Solid Waste Management Act if those byproducts are not discharged, deposited, injected, dumped, spilled, leaked or placed upon any land or water so that they constitute a threat of environmental contamination or pose a significant threat to public health.

Also, certain dredged material that is generated as part of a project permitted under part IV of ch. 373, F.S., or ch. 161, F.S., or that is authorized to be removed from sovereign submerged lands under ch. 253, F.S., shall be managed in accordance with the conditions of that permit or authorization unless the dredged material is regulated as a hazardous waste.

Section 14. Section 403.707, F.S., is amended to allow the DEP to exempt, by rule, certain facilities from the requirement for a permit if the construction or operation of the facility is not expected to create any significant threat to the environment or public health. An example would include the registration of yard trash processing facilities. For purposes of Part IV of ch. 403, F.S., (Resource Recovery and Management), and only when specified by DEP rule, permits may include other forms of licenses as defined in s. 120.52, F.S. This is intended to address an issue the Joint Administrative Procedures Committee has raised regarding DEP's authority to provide such exemptions, even if they are technically justified.

Provisions relating to biomedical incinerators are deleted. Biomedical incinerators are currently regulated under DEP's air rules.

Counties may exempt certain wood material from the definition of "construction and demolition debris" under certain conditions to promote an integrated solid waste management program.

Section 15. Section 403.7071, F.S., is created to provide for the management of storm-generated debris resulting from a storm event that is the subject of an emergency order by the DEP.

The DEP may issue field authorizations for staging areas in those counties affected by a storm event. These staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. A local government shall avoid

locating a staging area in wetlands and other surface waters to the greatest extent possible, and the area that is used or affected by a staging area must be fully restored upon cessation of use of the area.

Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, or a permitted C&D debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.

C&D debris that is mixed with other storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. C&D debris that is source-separated or separated from other hurricane-generated debris at an authorized staging area, may be managed at a permitted C&D debris disposal or recycling facility upon approval by the DEP of the methods and operations practices used to inspect the waste during segregation.

Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.

Local governments may conduct the burning of storm-generated yard trash and other vegetative debris in air-curtain incinerators without prior notice to the DEP. Demolition debris may also be burned in air-curtain incinerators if the material is limited to untreated wood. Within 10 days after commencing such burning, the local government must provide certain information to the DEP. The operator of the air-curtain incinerator is subject to any requirement to obtain an open burning authorization from the Division of Forestry of the DACS or any other agency empowered to grant such authorization.

Section 16. Section 403.708, F.S., is amended to delete some obsolete dates and to delete the term "degradable" because the term is not used in this section.

Section 17. Section 403.709, F.S., is amended to delete the specific percentages for the use of the funds in the Solid Waste Management Trust Fund (SWMTF). The current percentages were adopted by the Legislature in 2002 when a significant source of funding for the SWMTF was statutorily transferred to fund various water projects. The SWMTF'S purposes were refocused toward the core solid waste management responsibilities of the DEP and the funding percentages were to apply to: funding the DEP's solid waste activities; research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management; mosquito control activities in the Department of Agriculture and Consumer Services; litter prevention; and certain competitive and innovative grant programs. The percentages were to apply unless otherwise specified in the General Appropriations bill. These specific percentages have not been used in the General Appropriations bill.

This section is also amended to place time restrictions on certain liens imposed by the DEP.

Section 18. Section 403.7095, F.S., is amended to correct a cross-reference.

Section 19. Section 403.7125, F.S., is amended to delete the definitions of "landfill" and "closure" from this section. These definitions appear in s. 403.704, F.S.

The bill limits the use of an escrow account for the closure of a landfill to those landfills owned or operated by a local or state government or the Federal Government. Privately owned or operated landfills must provide other means of financial responsibility for the closure of landfills. However, any landfill owner or operator that had established an escrow account in accordance with the escrow provisions of this section and the conditions of its permit prior to January 1, 2006, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government.

An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide other means of financial assurance to the DEP in lieu of the escrow account.

Section 20. Section 403.716, F.S., is amended to delete provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities. The operators of these facilities are subject to the DEP's rules relating to training requirements under air permits. There has never been a separate solid waste training program for these operators.

Section 21. Section 403.717, F.S., is amended to revise the definitions of "waste tire" and "waste tire processing facility." The term "waste tire" will not include solid rubber tires and tires that are inseparable from the rim. These constitute a small percentage of the discarded tires and these tires are not amenable to recycling. Further, they pose little threat of fire, floating in standing water, or mosquito breeding.

The term "waste tire processing facility" is amended to provide consistency with the term "processed tire."

The provisions requiring a tire storage permit for a tire retreading business where fewer than 1,500 waste tires are kept on the premises is deleted. Currently, no permit is needed for storage of less than 1,500 tires anywhere.

Section 22. Section 403.7221, F.S., is amended, transferred, and renumbered as s. 403.70715, F.S. The DEP is allowed to issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility, including any hazardous waste management facility who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been adopted.

The time periods for such permits is extended from 1 year to 3 years, renewable no more than 3 times. This would remove a conflict with a similar Environmental Protection Agency rule regarding their research, development, and demonstration permits.

Section 23. Subsection (2) of section 403.201, F.S., is amended to correct a statutory cross reference.

Section 24. Section 403.722, F.S., is amended to clarify who must obtain a permit to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility. This section is also amended to provide for authorizations issued by the DEP to include both permits and clean closure orders.

The bill further clarifies that if an owner or operator of a hazardous waste facility intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.

Section 25. Section 403.7226, F.S., is amended to delete a separate report on hazardous waste management. This information is included in the DEP's Solid Waste Management in Florida report.

Section 26. Section 403.724, F.S., is amended to provide that authorizations for hazardous waste facilities include both permits and clean closure plan orders. Further, the amount of financial responsibility that is required for hazardous waste facilities includes the probable costs of properly closing the facility and performing corrective action.

Section 27. Section 403.7255, F.S., is amended to clarify that signs must be placed by the owner or operator at any site in the state which is listed or proposed for listing on the Superfund Site List or any site identified by the DEP as a site contaminated by hazardous waste where this is a risk of exposure to the public. The DEP shall establish requirements and procedures for the placement of signs, and may do so in rules, permits, orders, or other authorizations.

Section 28. Section 403.726, F.S., is amended to allow the DEP to issue an order requiring the prompt abatement of an imminent hazard caused by a hazardous substance. Currently, the DEP may only issue a permit to abate such hazards.

Section 29. Section 403.7265, F.S., is amended to require that local governments match 25 percent of the grant amount for certain hazardous waste collection grants. Currently, eligible local governments may receive up to $50,000 in grant funds for unique and innovative projects that improve the collection of hazardous waste and lower the incidence of improper management of conditionally exempt or household waste, provided they match the grant amount. This bill would reduce the local match requirement to 25 percent of the grant amount; however, if the DEP finds that the project has statewide applicability and has immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required.

Section 30. Section 403.885, F.S., is amended to adjust the criteria for the water projects grant program.

Section 31. Section 373.1961, F.S., is amended to correct a cross-reference.

Section 32. Sections 403.7075, 403.756, 403.78, 403,781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, F.S., relating to the Statewide Multipurpose Hazardous Waste Facility Siting Act, are repealed. This act has never been used and it is unlikely that a facility will ever be sited in Florida using these provisions. The repeal of s. 403.7075, F.S., relating to the submission of plans by certain persons to construct and operate a solid waste facility, is due to a conflict with the provisions in ch. 471, F.S., which regulates professional engineers. The repeal of s. 403.756, F.S., relating to a used oil report, is due to the fact that this information will be included in the DEP's Solid Waste Management in Florida report.

Section 33. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is not anticipated to be an economic impact on the general public. Many of the bill's provisions remove outdated or obsolete provisions and clarify several provisions as they relate to local governments and the Department of Environmental Protection.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Wildflower Advisory Council will now become advisory to the Department of Agriculture and Consumer Services (DACS). On the effective date of this act, the unexpended balance of the Wildflower license plates use fees will be transferred to the DACS. As of December 31, 2005, the balance, as reported by the Wildflower Advisory Council, is $690,095.62.

The Department of Environmental Protection will no longer be required to submit separate reports regarding hazardous waste management and used oil. This information will be consolidated in the department's Solid Waste Management in Florida report, thereby potentially saving personnel time and publication costs.

In order to be eligible to receive a hazardous waste collection grant, local governments currently must match the entire grant amount. This bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This may permit more local governments to take advantage of this grant program.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted one amendment to adjust the criteria for the water projects grant program.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to environmental protection; amending s. 403.413, F.S.; clarifying who is liable for dumping under the Florida Litter Law; amending s. 403.4131, F.S.; deleting the provisions relating to Keep Florida Beautiful, Inc.; providing that certain counties are encouraged to develop a regional approach to coordinating litter control and prevention programs; deleting certain requirements for a litter survey; placing the Wildflower Advisory Council under the control of the Department of Agriculture and Consumer Services; revising the duties of the council; amending s. 403.41315, F.S.; conforming provisions to changes made to the Keep Florida Beautiful, Inc., program; amending s. 403.4133, F.S.; placing the Adopt-a-Shore Program within the Department of Environmental Protection; amending s. 320.08058, F.S.; requiring that the proceeds of the fees paid for

Wildflower license plates be distributed to the Department of Agriculture and Consumer Services; specifying uses of the proceeds; transferring the balance of such proceeds from Keep Florida Beautiful, Inc., to the Department of Agriculture and Consumer Services; amending s. 403.703, F.S.; reordering definitions in alphabetical order; clarifying certain definitions and deleting definitions that are not used; amending ss. 316.003, 377.709, and 487.048, F.S.; conforming cross-references; amending s. 403.704, F.S.; deleting certain obsolete provisions relating to the state solid waste management program; amending s. 403.7043, F.S.; deleting certain obsolete and conflicting provisions relating to compost standards; amending s. 403.7045, F.S.; providing that industrial byproducts are not regulated under certain circumstances; conforming a cross-reference; clarifying certain provisions governing dredged material; amending s. 403.707, F.S.; clarifying the Department of Environmental Preservation's permit authority; deleting certain obsolete provisions; creating s. 403.7071, F.S.; providing for the management and disposal of storm-generated debris; amending s. 403.708, F.S.; deleting obsolete provisions and clarifying certain provisions governing landfills; amending s. 403.709, F.S.; revising the provisions relating to the distribution of the waste tire fees; amending s. 403.7095, F.S., relating to the solid waste management grant program; conforming a cross-reference; amending s. 403.7125, F.S.; deleting certain definitions

that appear elsewhere in law and clarifying certain financial-disclosure provisions with respect to the closure of a landfill; amending s. 403.716, F.S.; deleting certain provisions relating to the training of certain facility operators; amending s. 403.717, F.S.; clarifying the provisions relating to waste tires and the processing of waste tires; transferring, renumbering, and amending s. 403.7221, F.S.; increasing the duration of certain research, development, and demonstration permits; amending s. 403.201, F.S.; conforming a cross-reference; amending s. 403.722, F.S.; clarifying provisions relating to who is required to obtain certain hazardous waste permits; amending s. 403.7226, F.S.; deleting a provision requiring a report that is duplicative of other reports; amending s. 403.724, F.S.; clarifying certain financial-responsibility provisions; amending s. 403.7255, F.S.; providing additional requirements regarding the public notification of certain contaminated sites; amending s. 403.726, F.S.; authorizing the Department of Environmental Protection to issue an order to abate certain hazards; amending s. 403.7265, F.S.; requiring a local government to provide matching funds for certain grants; providing that matching funds are not required under certain conditions; amending s. 403.885, F.S.; revising grant program eligibility requirements for certain water management and restoration projects; eliminating requirements for certain funding and legislative review of such projects; amending s. 373.1961, F.S.; conforming a cross-reference; repealing s. 403.7075,

F.S., relating to the submission of certain plans for solid waste management facilities; repealing s. 403.756, F.S., relating to an annual used-oil report; repealing ss. 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, F.S., relating to the Statewide Multipurpose Hazardous Waste Facility Siting Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.--

(4) DUMPING LITTER PROHIBITED.--Unless otherwise authorized by law or permit, it is unlawful for any person to dump litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor. When any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. When any litter is thrown or discarded from a boat, the operator or

owner of the boat, or both, shall be deemed in violation of this section; or

(c) In or on any private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

Section 2. Section 403.4131, Florida Statutes, is amended to read:

403.4131 Litter control; Wildflower Advisory Council ~~"Keep Florida Beautiful, Incorporated"; placement of signs~~.--

~~(1) It is the intent of the Legislature that a coordinated effort of interested businesses, environmental and civic organizations, and state and local agencies of government be developed to plan for and assist in implementing solutions to the litter and solid waste problems in this state and that the state provide financial assistance for the establishment of a nonprofit organization with the name of "Keep Florida Beautiful, Incorporated," which shall be registered, incorporated, and operated in compliance with chapter 617. This nonprofit organization shall coordinate the statewide campaign and operate as the grassroots arm of the state's effort and shall serve as an umbrella organization for volunteer-based community programs. The organization shall be dedicated to helping Florida and its local communities solve solid waste problems, to developing and implementing a sustained litter prevention campaign, and to act as a working public-private partnership in helping to implement the state's Solid Waste Management Act. As part of this effort,~~

~~Keep Florida Beautiful, Incorporated, in cooperation with the Environmental Education Foundation, shall strive to educate citizens, visitors, and businesses about the important relationship between the state's environment and economy. Keep Florida Beautiful, Incorporated, is encouraged to explore and identify economic incentives to improve environmental initiatives in the area of solid waste management. The membership of the board of directors of this nonprofit organization may include representatives of the following organizations: the Florida League of Cities, the Florida Association of Counties, the Governor's Office, the Florida Chapter of the National Solid Waste Management Association, the Florida Recyclers Association, the Center for Marine Conservation, Chapter of the Sierra Club, the Associated Industries of Florida, the Florida Soft Drink Association, the Florida Petroleum Council, the Retail Grocers Association of Florida, the Florida Retail Federation, the Pulp and Paper Association, the Florida Automobile Dealers Association, the Beer Industries of Florida, the Florida Beer Wholesalers Association, and the Distilled Spirits Wholesalers.~~

~~(2) As a partner working with government, business, civic, environmental, and other organizations, Keep Florida Beautiful, Incorporated, shall strive to assist the state and its local communities by contracting for the development of a highly visible antilitter campaign that, at a minimum, includes:~~

~~(a) Coordinating with the Center for Marine Conservation and the Center for Solid and Hazardous Waste Management to~~

~~identify components of the marine debris and litter stream and groups that habitually litter.~~

~~(b) Designing appropriate advertising to promote the proper management of solid waste, with emphasis on educating groups that habitually litter.~~

~~(c) Fostering public awareness and striving to build an environmental ethic in this state through the development of educational programs that result in an understanding and in action on the part of individuals and organizations about the role they must play in preventing litter and protecting Florida's environment.~~

~~(d) Developing educational programs and materials that promote the proper management of solid waste, including the proper disposal of litter.~~

~~(e) Administering grants provided by the state. Grants authorized under this section shall be subject to normal department audit procedures and review.~~

(1) ~~(3)~~ The Department of Transportation shall establish an "adopt-a-highway" program to allow local organizations to be identified with specific highway cleanup and highway beautification projects authorized under s. 339.2405 ~~and shall coordinate such efforts with Keep Florida Beautiful, Inc~~. The department shall report to the Governor and the Legislature on the progress achieved and the savings incurred by the "adopt-a-highway" program. The department shall also monitor and report on compliance with provisions of the adopt-a-highway program to ensure that organizations that participate in the program comply with the goals identified by the department.

(2) ~~(4)~~ The Department of Transportation shall place signs discouraging litter at all off-ramps of the interstate highway system in the state. ~~The department shall place other highway signs as necessary to discourage littering through use of the antilitter program developed by Keep Florida Beautiful, Incorporated.~~

(3) ~~(5)~~ Each county is encouraged to initiate a litter control and prevention program or to expand upon its existing program. The department shall establish a system of grants for municipalities and counties to implement litter control and prevention programs. In addition to the activities described in subsection (1), such grants shall at a minimum be used for litter cleanup, grassroots educational programs involving litter removal and prevention, and the placement of litter and recycling receptacles. Counties are encouraged to form working public private partnerships as authorized under this section to implement litter control and prevention programs at the community level. The grants authorized pursuant to this section shall be incorporated as part of the recycling and education grants. Counties that have a population under 100,000 ~~75,000~~ are encouraged to develop a regional approach to administering and coordinating their litter control and prevention programs.

~~(6) The department may contract with Keep Florida Beautiful, Incorporated, to help carry out the provisions of this section. All contracts authorized under this section are subject to normal department audit procedures and review.~~

~~(7) In order to establish continuity for the statewide program, those local governments and community programs~~

~~receiving grants for litter prevention and control must use the official State of Florida litter control or campaign symbol adopted by Keep Florida Beautiful, Incorporated, for use on various receptacles and program material.~~

~~(8) The Legislature establishes a litter reduction goal of 50 percent reduction from the period January 1, 1994, to January 1, 1997. The method of determination used to measure the reduction in litter is the survey conducted by the Center for Solid and Hazardous Waste Management. The center shall consider existing litter survey methodologies.~~

~~(9) The Department of Environmental Protection shall contract with the Center for Solid and Hazardous Waste Management for an ongoing annual litter survey, the first of which is to be conducted by January 1, 1994. The center shall appoint a broad-based work group not to exceed seven members to assist in the development and implementation of the survey. Representatives from the university system, business, government, and the environmental community shall be considered by the center to serve on the work group. Final authority on implementing and conducting the survey rests with the center. The first survey is to be designed to serve as a baseline by measuring the amount of current litter and marine debris, and is to include a methodology for measuring the reduction in the amount of litter and marine debris to determine the progress toward the litter reduction goal established in subsection (8). Annually thereafter, additional surveys are to be conducted and must also include a methodology for measuring the reduction in~~

~~the amount of litter and for determining progress toward the litter reduction goal established in subsection (8).~~

(4) ~~(10)~~ (a) There is created within the Department of Agriculture and Consumer Services ~~within Keep Florida Beautiful, Inc.,~~ the Wildflower Advisory Council, consisting of a maximum of ten ~~nine~~ members ~~to direct and oversee the expenditure of the Wildflower Account~~. The Wildflower Advisory Council shall include a representative from the University of Florida Institute of Food and Agricultural Sciences, the Florida Department of Transportation, the Department of Agriculture and Consumer Services, ~~and~~ the Florida Department of Environmental Protection, the Florida League of Cities, and the Florida Association of Counties. Other members of the committee may include representatives from the Florida Federation of Garden Clubs, Inc., Think Beauty Foundation, the Florida Chapter of the American Society of Landscape Architects, Inc., and a representative of the Master Gardener's Program.

(b) The Wildflower Advisory Council shall advise the Department of Agriculture and Consumer Services and develop procedures of operation, research contracts, educational and marketing programs, and wildflower planting grants for Florida native wildflowers, plants, and grasses. The council shall also make recommendations to the department concerning ~~the final determination of~~ what constitutes acceptable species of wildflowers and other plantings supported by these programs.

Section 3. Section 403.41315, Florida Statutes, is amended to read:

403.41315 Comprehensive illegal dumping, litter, and marine debris control and prevention.--

(1) The Legislature finds that a comprehensive illegal dumping, litter, and marine debris control and prevention program is necessary to protect the beauty and the environment of Florida. The Legislature also recognizes that a comprehensive illegal dumping, litter, and marine debris control and prevention program will have a positive effect on the state's economy. The Legislature finds that the state's rapid population growth, the ever-increasing mobility of its population, and the large number of tourists contribute to the need for a comprehensive illegal dumping, litter, and marine debris control and prevention program. The Legislature further finds that the program must be coordinated and capable of having statewide identity and grassroots community support.

(2) The comprehensive illegal dumping, litter, and marine debris control and prevention program at a minimum must include the following:

(a) A local ~~statewide~~ public awareness and educational campaign~~, coordinated by Keep Florida Beautiful, Incorporated,~~ to educate individuals, government, businesses, and other organizations concerning the role they must assume in preventing and controlling litter.

(b) Enforcement provisions authorized under s. 403.413.

(c) Enforcement officers whose responsibilities include grassroots education along with enforcing litter and illegal dumping violations.

(d) Local illegal dumping, litter, and marine debris control and prevention programs operated at the county level with emphasis placed on grassroots educational programs designed to prevent and remove litter and marine debris.

(e) A statewide adopt-a-highway program as authorized under s. 403.4131.

(f) The highway beautification program authorized under s. 339.2405.

(g) A statewide Adopt-a-Shore program that includes beach, river, and lake shorelines and emphasizes litter and marine debris cleanup and prevention.

(h) The prohibition of balloon releases as authorized under s. 372.995.

(i) The placement of approved identifiable litter and recycling receptacles.

(j) Other educational programs that are implemented at the grassroots level ~~coordinated through Keep Florida Beautiful, Inc.,~~ involving volunteers and community programs that clean up and prevent litter, including Youth Conservation Corps activities.

Section 4. Section 403.4133, Florida Statutes, is amended to read:

403.4133 Adopt-a-Shore Program.--

(1) The Legislature finds that litter and illegal dumping present a threat to the state's wildlife, environment, and shorelines. The Legislature further finds that public awareness and education will assist in preventing litter from being illegally deposited along the state's shorelines.

(2) The Adopt-a-Shore Program shall be created within the Department of Environmental Protection ~~nonprofit organization referred to in s. 403.4131(1), named Keep Florida Beautiful, Incorporated~~. The program shall be designed to educate the state's citizens and visitors about the importance of litter prevention and shall include approaches and techniques to remove litter from the state's shorelines.

(3) For the purposes of this section, the term "shoreline" includes, but is not limited to, beaches, rivershores, and lakeshores.

Section 5. Subsection (28) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.--

(28) FLORIDA WILDFLOWER LICENSE PLATES.--

(a) The department shall develop a Florida Wildflower license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "State Wildflower" and "coreopsis" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Department of Agriculture and Consumer Services, to be used for the purposes set forth in ~~Wildflower Account established by Keep Florida Beautiful, Inc., created by~~ s. 403.4131. The proceeds must be used to establish native Florida wildflower research programs, wildflower educational programs, and wildflower grant programs to municipal, county, and community-based groups in this state. A maximum of 10 percent of the proceeds from the sale of such plates may be used for administrative costs.

Section 6. All unexpended proceeds of fees paid for Wildflower license plates which are held by Keep Florida Beautiful, Inc., must be transferred to the Department of Agriculture and Consumer Services promptly after the effective date of this act.

Section 7. Section 403.703, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 403.703, F.S., for present text.)

403.703 Definitions.--As used in this part, the term:

(1) "Ash residue" has the same meaning as in the department rule governing solid waste combustors which defines the term.

(2) "Biological waste" means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(3) "Biomedical waste" means any solid waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste that contains human-disease-causing agents; discarded disposable sharps; human blood and human blood products and body fluids; and other materials that in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating

facility. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(4) "Clean debris" means any solid waste that is virtually inert, that is not a pollution threat to groundwater or surface waters, that is not a fire hazard, and that is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including embedded pipe or steel, brick, glass, ceramics, and other wastes designated by the department.

(5) "Closure" means the cessation of operation of a solid waste management facility and the act of securing such facility so that it will pose no significant threat to human health or the environment and includes long-term monitoring and maintenance of a facility if required by department rule.

(6) "Construction and demolition debris" means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land-development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause the resulting mixture to

be classified as other than construction and demolition debris. The term also includes:

(a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project.

(b) Except as provided in s. 403.707(9)(j), yard trash and unpainted, nontreated wood scraps from sources other than construction or demolition projects.

(c) Scrap from manufacturing facilities which is the type of material generally used in construction projects and which would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities.

(d) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

(7) "County," or any like term, means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution and, when s. 403.706(19) applies, means a special district or other entity.

(8) "Department" means the Department of Environmental Protection or any successor agency performing a like function.

(9) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or upon any land or water so that such

solid waste or hazardous waste or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment.

(10) "Generation" means the act or process of producing solid or hazardous waste.

(11) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this part.

(12) "Hazardous substance" means any substance that is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767.

(13) "Hazardous waste" means solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(14) "Hazardous waste facility" means any building, site, structure, or equipment at or by which hazardous waste is disposed of, stored, or treated.

(15) "Hazardous waste management" means the systematic control of the collection, source separation, storage,

transportation, processing, treatment, recovery, recycling, and disposal of hazardous wastes.

(16) "Land disposal" means any placement of hazardous waste in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt bed formation, salt dome formation, or underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(17) "Landfill" means any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 and which receives solid waste for disposal in or upon land. The term does not include a landspreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.

(18) "Manifest" means the recordkeeping system used for identifying the concentration, quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, storage, or treatment.

(19) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

(20) "Municipality," or any like term, means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution and, when s. 403.706(19) applies, means a special district or other entity.

(21) "Operation," with respect to any solid waste management facility, means the disposal, storage, or processing of solid waste at and by the facility.

(22) "Person" means any and all persons, natural or artificial, including any individual, firm, or association; any municipal or private corporation organized or existing under the laws of this state or any other state; any county of this state; and any governmental agency of this state or the Federal Government.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage, or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered materials" means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.

(25) "Recovered materials processing facility" means a facility engaged solely in the storage, processing, resale, or reuse of recovered materials. Such a facility is not a solid waste management facility if it meets the conditions of s. 403.7045(1)(e).

(26) "Recyclable material" means those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(28) "Resource recovery" means the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.

(29) "Resource recovery equipment" means equipment or machinery exclusively and integrally used in the actual process of recovering material or energy resources from solid waste.

(30) "Sludge" includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water-supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

(31) "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

Recovered materials as defined in subsection (24) are not solid waste.

(32) "Solid waste disposal facility" means any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.

(33) "Solid waste management" means the process by which solid waste is collected, transported, stored, separated, processed, or disposed of in any other way according to an orderly, purposeful, and planned program, which includes closure.

(34) "Solid waste management facility" means any solid waste disposal area, volume-reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, except the portion of such facilities, if any, which is used for the management of solid waste.

(35) "Source separated" means that the recovered materials are separated from solid waste at the location where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other, and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials. Materials are not

considered source-separated when two or more types of recovered materials are deposited in combination with each other in a commercial collection container located where the materials are generated and when such materials contain more than 10 percent solid waste by volume or weight. For purposes of this subsection, the term "various types of recovered materials" means metals, paper, glass, plastic, textiles, and rubber.

(36) "Special wastes" means solid wastes that can require special handling and management, including, but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, and biological wastes.

(37) "Storage" means the containment or holding of a hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(38) "Transfer station" means a site the primary purpose of which is to store or hold solid waste for transport to a processing or disposal facility.

(39) "Transport" means the movement of hazardous waste from the point of generation or point of entry into the state to any offsite intermediate points and to the point of offsite ultimate disposal, storage, treatment, or exit from the state.

(40) "Treatment," when used in connection with hazardous waste, means any method, technique, or process, including neutralization, which is designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize it or render it

nonhazardous, safe for transport, amenable to recovery, amenable to storage or disposal, or reduced in volume or concentration. The term includes any activity or processing that is designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(41) "Volume reduction plant" includes incinerators, pulverizers, compactors, shredding and baling plants, composting plants, and other plants that accept and process solid waste for recycling or disposal.

(42) "White goods" includes inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

(43) "Yard trash" means vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

Section 8. Subsection (69) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.--The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(69) HAZARDOUS MATERIAL.--Any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term includes hazardous waste as defined in s. 403.703(13) ~~s. 403.703(21)~~.

Section 9. Paragraph (f) of subsection (2) of section 377.709, Florida Statutes, is amended to read:

377.709 Funding by electric utilities of local governmental solid waste facilities that generate electricity.--

(2) DEFINITIONS.--As used in this section, the term:

(f) "Solid waste facility" means a facility owned or operated by, or on behalf of, a local government for the purpose of disposing of solid waste, as that term is defined in s. 403.703(31) ~~s. 403.703(13)~~, by any process that produces heat and incorporates, as a part of the facility, the means of converting heat to electrical energy in amounts greater than actually required for the operation of the facility.

Section 10. Subsection (1) of section 487.048, Florida Statutes, is amended to read:

487.048 Dealer's license; records.--

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides shall obtain a dealer's license from the department. Application for the license shall be made on a form prescribed by the department. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding $250 shall be established by rule. However, a user of a restricted-use pesticide may distribute unopened containers

of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer's license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703(13) ~~s. 403.703(21)~~.

Section 11. Section 403.704, Florida Statutes, is amended to read:

403.704 Powers and duties of the department.--The department shall have responsibility for the implementation and enforcement of the provisions of this act. In addition to other powers and duties, the department shall:

(1) Develop and implement, in consultation with local governments, a state solid waste management program, as defined in s. 403.705~~, and update the program at least every 3 years~~. ~~In developing rules to implement the state solid waste management program, the department shall hold public hearings around the state and shall give notice of such public hearings to all local governments and regional planning agencies.~~

(2) Provide technical assistance to counties, municipalities, and other persons, and cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this act.

(3) Promote the planning and application of recycling and resource recovery systems which preserve and enhance the quality of the air, water, and other natural resources of the state and assist in and encourage, where appropriate, the development of regional solid waste management facilities.

(4) Serve as the official state representative for all purposes of the federal Solid Waste Disposal Act, as amended by Pub. L. No. 91-512, or as subsequently amended.

(5) Use private industry or the State University System through contractual arrangements for implementation of some or all of the requirements of the state solid waste management program and for such other activities as may be considered necessary, desirable, or convenient.

(6) Encourage recycling and resource recovery as a source of energy and materials.

(7) Assist in and encourage, as much as possible, the development within the state of industries and commercial enterprises which are based upon resource recovery, recycling, and reuse of solid waste.

~~(8) Charge reasonable fees for any services it performs pursuant to this act, provided user fees shall apply uniformly within each municipality or county to all users who are provided with solid waste management services.~~

~~(9) Acquire, at its discretion, personal or real property or any interest therein by gift, lease, or purchase for the purpose of providing sites for solid waste management facilities.~~

~~(10) Acquire, construct, reconstruct, improve, maintain, equip, furnish, and operate, at its discretion, such solid waste management facilities as are called for by the state solid waste management program.~~

~~(11) Receive funds or revenues from the sale of products, materials, fuels, or energy in any form derived from processing~~

~~of solid waste by state-owned or state-operated facilities, which funds or revenues shall be deposited into the Solid Waste Management Trust Fund.~~

(8) ~~(12)~~ Determine by rule the facilities, equipment, personnel, and number of monitoring wells to be provided at each ~~Class I~~ solid waste disposal area.

~~(13) Encourage, but not require, as part of a Class II solid waste disposal area, a potable water supply; an employee shelter; handwashing and toilet facilities; equipment washout facilities; electric service for operations and repairs; equipment shelter for maintenance and storage of parts, equipment, and tools; scales for weighing solid waste received at the disposal area; a trained equipment operator in full-time attendance during operating hours; and communication facilities for use in emergencies. The department may require an attendant at a Class II solid waste disposal area during the hours of operation if the department affirmatively demonstrates that such a requirement is necessary to prevent unlawful fires, unauthorized dumping, or littering of nearby property.~~

~~(14) Require a Class II solid waste disposal area to have at least one monitoring well which shall be placed adjacent to the site in the direction of groundwater flow unless otherwise exempted by the department. The department may require additional monitoring wells not farther than 1 mile from the site if it is affirmatively demonstrated by the department that a significant change in the initial quality of the water has occurred in the downstream monitoring well which adversely affects the beneficial uses of the water. These wells may be~~

~~public or private water supply wells if they are suitable for use in determining background water quality levels.~~

(9) ~~(15)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this act, including requirements for the classification, construction, operation, maintenance, and closure of solid waste management facilities and requirements for, and conditions on, solid waste disposal in this state, whether such solid waste is generated within this state or outside this state as long as such requirements and conditions are not based on the out-of-state origin of the waste and are consistent with applicable provisions of law. When classifying solid waste management facilities, the department shall consider the hydrogeology of the site for the facility, the types of wastes to be handled by the facility, and methods used to control the types of waste to be handled by the facility and shall seek to minimize the adverse effects of solid waste management on the environment. Whenever the department adopts any rule stricter or more stringent than one which has been set by the United States Environmental Protection Agency, the procedures set forth in s. 403.804(2) shall be followed. The department shall not, however, adopt hazardous waste rules for solid waste for which special studies were required prior to October 1, 1988, under s. 8002 of the Resource Conservation and Recovery Act, 42 U.S.C. s. 6982, as amended, until the studies are completed by the United States Environmental Protection Agency and the information is available to the department for consideration in adopting its own rule.

(10) ~~(16)~~ Issue or modify permits on such conditions as are necessary to effect the intent and purposes of this act, and may deny or revoke permits.

~~(17) Conduct research, using the State University System, solid waste professionals from local governments, private enterprise, and other organizations, on alternative, economically feasible, cost-effective, and environmentally safe solid waste management and landfill closure methods which protect the health, safety, and welfare of the public and the environment and which may assist in developing markets and provide economic benefits to local governments, the state, and its citizens, and solicit public participation during the research process. The department shall incorporate such cost-effective landfill closure methods in the appropriate department rule as alternative closure requirements.~~

(11) ~~(18)~~ Develop and implement or contract for services to develop information on recovered materials markets and strategies for market development and expansion for use of these materials. Additionally, the department shall maintain a directory of recycling businesses operating in the state and shall serve as a coordinator to match recovered materials with markets. Such directory shall be made available to the public and to local governments to assist with their solid waste management activities.

~~(19) Authorize variances from solid waste closure rules adopted pursuant to this part, provided such variances are applied for and approved in accordance with s. 403.201 and will~~

~~not result in significant threats to human health or the environment.~~

(12) ~~(20)~~ Establish accounts and deposit to the Solid Waste Management Trust Fund and control and administer moneys it may withdraw from the fund.

(13) ~~(21)~~ Manage a program of grants, using funds from the Solid Waste Management Trust Fund and funds provided by the Legislature for solid waste management, for programs for recycling, composting, litter control, and special waste management and for programs which provide for the safe and proper management of solid waste.

(14) ~~(22)~~ Budget and receive appropriated funds and accept, receive, and administer grants or other funds or gifts from public or private agencies, including the state and the Federal Government, for the purpose of carrying out the provisions of this act.

(15) ~~(23)~~ Delegate its powers, enter into contracts, or take such other actions as may be necessary to implement this act.

(16) ~~(24)~~ Receive and administer funds appropriated for county hazardous waste management assessments.

(17) ~~(25)~~ Provide technical assistance to local governments and regional agencies to ensure consistency between county hazardous waste management assessments; coordinate the development of such assessments with the assistance of the appropriate regional planning councils; and review and make recommendations to the Legislature relative to the sufficiency

of the assessments to meet state hazardous waste management needs.

(18) ~~(26)~~ Increase public education and public awareness of solid and hazardous waste issues by developing and promoting statewide programs of litter control, recycling, volume reduction, and proper methods of solid waste and hazardous waste management.

(19) ~~(27)~~ Assist the hazardous waste storage, treatment, or disposal industry by providing to the industry any data produced on the types and quantities of hazardous waste generated.

(20) ~~(28)~~ Institute a hazardous waste emergency response program which would include emergency telecommunication capabilities and coordination with appropriate agencies.

(21) ~~(29)~~ Promulgate rules necessary to accept delegation of the hazardous waste management program from the Environmental Protection Agency under the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616.

(22) ~~(30)~~ Adopt rules, if necessary, to address the incineration and disposal of biomedical waste and the management of biological waste within the state, whether such waste is generated within this state or outside this state, as long as such requirements and conditions are not based on the out-of-state origin of the waste and are consistent with applicable provisions of law.

Section 12. Section 403.7043, Florida Statutes, is amended to read:

403.7043 Compost standards and applications.--

(1) In order to protect the state's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the state must meet criteria established by the department.

(2) The department shall ~~Within 6 months after October 1, 1988, the department shall initiate rulemaking to~~ establish and maintain rules addressing standards for the production of compost ~~and shall complete and promulgate those rules within 12 months after initiating the process of rulemaking~~, including rules establishing:

(a) Requirements necessary to produce hygienically safe compost products for varying applications.

(b) A classification scheme for compost based on~~:~~ the types of waste composted, ~~including at least one type containing only yard trash;~~ the maturity of the compost, ~~including at least three degrees of decomposition for fresh, semimature, and mature;~~ and the levels of organic and inorganic constituents in the compost. This scheme shall address:

1. Methods for measurement of the compost maturity.

2. Particle sizes.

3. Moisture content.

4. Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the department establishes, and the analytical methods to determine those levels.

~~(3) Within 6 months after October 1, 1988, the department shall initiate rulemaking to prescribe the allowable uses and application rates of compost and shall complete and promulgate~~

~~those rules within 12 months after initiating the process of rulemaking, based on the following criteria:~~

~~(a) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.~~

~~(b) The allowable uses of compost based on maturity and type of compost.~~

~~(4) If compost is produced which does not meet the criteria prescribed by the department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the department, unless a different application is specifically permitted by the department.~~

~~(5) The provisions of s. 403.706 shall not prohibit any county or municipality which has in place a memorandum of understanding or other written agreement as of October 1, 1988, from proceeding with plans to build a compost facility.~~

Section 13. Subsections (1), (2), and (3) of section 403.7045, Florida Statutes, are amended to read:

403.7045 Application of act and integration with other acts.--

(1) The following wastes or activities shall not be regulated pursuant to this act:

(a) Byproduct material, source material, and special nuclear material, the generation, transportation, disposal, storage, or treatment of which is regulated under chapter 404 or under the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923, as amended;

(b) Suspended solids and dissolved materials in domestic sewage effluent or irrigation return flows or other discharges which are point sources subject to permits pursuant to provisions of this chapter or pursuant to s. 402 of the Clean Water Act, Pub. L. No. 95-217;

(c) Emissions to the air from a stationary installation or source regulated under provisions of this chapter or under the Clean Air Act, Pub. L. No. 95-95;

(d) Drilling fluids, produced waters, and other wastes associated with the exploration for, or development and production of, crude oil or natural gas which are regulated under chapter 377; or

(e) Recovered materials or recovered materials processing facilities shall not be regulated pursuant to this act, except as provided in s. 403.7046, if:

1. A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within 1 year.

2. The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of such facility so that such recovered materials, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.

3. The recovered materials handled by the facility are not hazardous wastes as defined under s. 403.703, and rules promulgated pursuant thereto.

4. The facility is registered as required in s. 403.7046.

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined under s. 403.703 and rules adopted under this section.

(2) Except as provided in s. 403.704(9) ~~s. 403.704(15)~~, the following wastes shall not be regulated as a hazardous waste pursuant to this act, except when determined by the United States Environmental Protection Agency to be a hazardous waste:

(a) Ashes and scrubber sludges generated from the burning of boiler fuel for generation of electricity or steam.

(b) Agricultural and silvicultural byproduct material and agricultural and silvicultural process waste from normal farming or processing.

(c) Discarded material generated by the mining and beneficiation and chemical or thermal processing of phosphate

rock, and precipitates resulting from neutralization of phosphate chemical plant process and nonprocess waters.

(3) The following wastes or activities shall be regulated pursuant to this act in the following manner:

(a) Dredged material that is generated as part of a project permitted under part IV of chapter 373 or chapter 161, or that is authorized to be removed from sovereign submerged lands under chapter 253, ~~Dredge spoil or fill material~~ shall be managed in accordance with the conditions of that permit or authorization unless the dredged material is regulated as hazardous waste pursuant to this part ~~disposed of pursuant to a dredge and fill permit, but whenever hazardous components are disposed of within the dredge or fill material, the dredge and fill permits shall specify the specific hazardous wastes contained and the concentration of each such waste~~. If the dredged material contains hazardous substances, the department may further ~~then~~ limit or restrict the sale or use of the dredged ~~dredge and fill~~ material and may specify such other conditions relative to this material as are reasonably necessary to protect the public from the potential hazards.

(b) Hazardous wastes that ~~which~~ are contained in artificial recharge waters or other waters intentionally introduced into any underground formation and that ~~which~~ are permitted pursuant to s. 373.106 shall also be handled in compliance with the requirements and standards for disposal, storage, and treatment of hazardous waste under this act.

(c) Solid waste or hazardous waste facilities that ~~which~~ are operated as a part of the normal operation of a power

generating facility and which are licensed by certification pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, shall undergo such certification subject to the substantive provisions of this act.

(d) Biomedical waste and biological waste shall be disposed of only as authorized by the department. However, any person who unknowingly disposes into a sanitary landfill or waste-to-energy facility any such waste that ~~which~~ has not been properly segregated or separated from other solid wastes by the generating facility is not guilty of a violation under this act. ~~Nothing in~~ This paragraph does not ~~shall be construed to~~ prohibit the department from seeking injunctive relief pursuant to s. 403.131 to prohibit the unauthorized disposal of biomedical waste or biological waste.

Section 14. Section 403.707, Florida Statutes, is amended to read:

403.707 Permits.--

(1) A ~~No~~ solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the department. The department may, by rule, exempt specified types of facilities from the requirement for a permit if it determines that construction for operation of the facility is not expected to create any significant threat to the environment or public health. For purposes of this part, and only when specified by department rule, a permit may include registrations as well as other forms of licenses as defined in s. 120.52. Solid waste construction permits issued under this section may include any

permit conditions necessary to achieve compliance with the recycling requirements of this act. The department shall pursue reasonable timeframes for closure and construction requirements, considering pending federal requirements and implementation costs to the permittee. The department shall adopt a rule establishing performance standards for construction and closure of solid waste management facilities. The standards shall allow flexibility in design and consideration for site-specific characteristics.

(2) Except as provided in s. 403.722(6), no permit under this section is required for the following, provided that the activity shall not create a public nuisance or any condition adversely affecting the environment or public health and shall not violate other state or local laws, ordinances, rules, regulations, or orders:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, provided such waste is either ordinary household waste from their residential property or is rocks, soils, trees, tree remains, and other vegetative matter that ~~which~~ normally result from land development operations. Disposal of materials that ~~which~~ could create a public nuisance or adversely affect the environment or public health, such as: white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or

rented property, or property subject to a homeowners or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, provided the environmental effects of such disposal on groundwater and surface waters are:

1. Addressed or authorized by a site certification order issued under part II or a permit issued by the department pursuant to this chapter or rules adopted pursuant thereto; or

2. Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, provided that such disposal occurred prior to October 1, 1988.

(e) Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning, provided that no public nuisance or any condition adversely affecting the environment or the public health is created thereby and that state or federal ambient air quality standards are not violated.

(f) The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, nor does it affect a person's responsibility to dispose of clean debris appropriately if it is not to be used as fill material.

(g) Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(4) When application for a construction permit for a Class I ~~or Class II~~ solid waste disposal area is made, it is the duty of the department to provide a copy of the application, within 7 days after filing, to the water management district having jurisdiction where the area is to be located. The water management district may prepare an advisory report as to the impact on water resources. This report shall contain the district's recommendations as to the disposition of the application and shall be submitted to the department no later than 30 days prior to the deadline for final agency action by the department. However, the failure of the department or the water management district to comply with the provisions of this subsection shall not be the basis for the denial, revocation, or remand of any permit or order issued by the department.

(5) The department may not issue a construction permit pursuant to this part for a new solid waste landfill within 3,000 feet of Class I surface waters.

(6) The department may issue a construction permit pursuant to this part only to a solid waste management facility that provides the conditions necessary to control the safe movement of wastes or waste constituents into surface or ground waters or the atmosphere and that will be operated, maintained, and closed by qualified and properly trained personnel. Such facility must if necessary:

(a) Use natural or artificial barriers which are capable of controlling lateral or vertical movement of wastes or waste constituents into surface or ground waters.

(b) Have a foundation or base that is capable of providing support for structures and waste deposits and capable of preventing foundation or base failure due to settlement, compression, or uplift.

(c) Provide for the most economically feasible, cost-effective, and environmentally safe control of leachate, gas, stormwater, and disease vectors and prevent the endangerment of public health and the environment.

Open fires, air-curtain incinerators, or trench burning may not be used as a means of disposal at a solid waste management facility, unless permitted by the department under s. 403.087.

(7) Prior to application for a construction permit, an applicant shall designate to the department temporary backup disposal areas or processes for the resource recovery facility. Failure to designate temporary backup disposal areas or processes shall result in a denial of the construction permit.

(8) The department may refuse to issue a permit to an applicant who by past conduct in this state has repeatedly violated pertinent statutes, rules, or orders or permit terms or conditions relating to any solid waste management facility and who is deemed to be irresponsible as defined by department rule. For the purposes of this subsection, an applicant includes the owner or operator of the facility, or if the owner or operator is a business entity, a parent of a subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than 50 percent of the stock of the corporation.

~~(9) Before or on the same day of filing with the department of an application for any construction permit for the incineration of biomedical waste which the department may require by rule, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published in a newspaper of general circulation in the county in which the facility is located or is proposed to be located. Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and~~

~~a newspaper authorized to publish legal notices in that county. The notice shall contain:~~

~~(a) The name of the applicant and a brief description of the facility and its location.~~

~~(b) The location of the application file and when it is available for public inspection.~~

~~The notice shall be prepared by the applicant and shall comply with the following format:~~

~~Notice of Application~~

~~The Department of Environmental Protection announces receipt of an application for a permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).~~

~~This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).~~

~~(10) A permit, which the department may require by rule, for the incineration of biomedical waste, may not be transferred by the permittee to any other entity, except in conformity with the requirements of this subsection.~~

~~(a) Within 30 days after the sale or legal transfer of a permitted facility, the permittee shall file with the department~~

~~an application for transfer of the permits on such form as the department shall establish by rule. The form must be completed with the notarized signatures of both the transferring permittee and the proposed permittee.~~

~~(b) The department shall approve the transfer of a permit unless it determines that the proposed permittee has not provided reasonable assurances that the proposed permittee has the administrative, technical, and financial capability to properly satisfy the requirements and conditions of the permit, as determined by department rule. The determination shall be limited solely to the ability of the proposed permittee to comply with the conditions of the existing permit, and it shall not concern the adequacy of the permit conditions. If the department proposes to deny the transfer, it shall provide both the transferring permittee and the proposed permittee a written objection to such transfer together with notice of a right to request a proceeding on such determination under chapter 120.~~

~~(c) Within 90 days after receiving a properly completed application for transfer of a permit, the department shall issue a final determination. The department may toll the time for making a determination on the transfer by notifying both the transferring permittee and the proposed permittee that additional information is required to adequately review the transfer request. Such notification shall be provided within 30 days after receipt of an application for transfer of the permit, completed pursuant to paragraph (a). If the department fails to take action to approve or deny the transfer within 90 days after receipt of the completed application or within 90 days after~~

~~receipt of the last item of timely requested additional information, the transfer shall be deemed approved.~~

~~(d) The transferring permittee is encouraged to apply for a permit transfer well in advance of the sale or legal transfer of a permitted facility. However, the transfer of the permit shall not be effective prior to the sale or legal transfer of the facility.~~

~~(e) Until the transfer of the permit is approved by the department, the transferring permittee and any other person constructing, operating, or maintaining the permitted facility shall be liable for compliance with the terms of the permit. Nothing in this section shall relieve the transferring permittee of liability for corrective actions that may be required as a result of any violations occurring prior to the legal transfer of the permit.~~

~~(11) The department shall review all permit applications for any designated Class I solid waste disposal facility. As used in this subsection, the term "designated Class I solid waste disposal facility" means any facility that is, as of May 12, 1993, a solid waste disposal facility classified as an active Class I landfill by the department, that is located in whole or in part within 1,000 feet of the boundary of any municipality, but that is not located within any county with an approved charter or consolidated municipal government, is not located within any municipality, and is not operated by a municipality. The department shall not permit vertical expansion or horizontal expansion of any designated Class I solid waste disposal facility unless the application for such permit was~~

~~filed before January 1, 1993, and no solid waste management facility may be operated which is a vertical expansion or horizontal expansion of a designated Class I solid waste disposal facility. As used in this subsection, the term "vertical expansion" means any activity that will result in an increase in the height of a designated Class I solid waste disposal facility above 100 feet National Geodetic Vertical Datum, except solely for closure, and the term "horizontal expansion" means any activity that will result in an increase in the ground area covered by a designated Class I solid waste disposal facility, or if within 1 mile of a designated Class I solid waste disposal facility, any new or expanded operation of any solid waste disposal facility or area, or of incineration of solid waste, or of storage of solid waste for more than 1 year, or of composting of solid waste other than yard trash.~~

(9) ~~(12)~~ The department shall establish a separate category for solid waste management facilities which accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit that ~~which~~ receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems. Facilities accepting materials defined in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~ must implement a groundwater monitoring system adequate to detect contaminants that may

reasonably be expected to result from such disposal prior to the acceptance of those materials.

(a) The department shall establish reasonable construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for such facilities. The department shall take into account the nature of the waste accepted at various facilities when establishing these requirements, and may impose less stringent requirements, including a system of general permits or registration requirements, for facilities that accept only a segregated waste stream which is expected to pose a minimal risk to the environment and public health, such as clean debris. The Legislature recognizes that incidental amounts of other types of solid waste are commonly generated at construction or demolition projects. In any enforcement action taken pursuant to this section, the department shall consider the difficulty of removing these incidental amounts from the waste stream.

(b) The department shall not require liners and leachate collection systems at individual facilities unless it demonstrates, based upon the types of waste received, the methods for controlling types of waste disposed of, the proximity of groundwater and surface water, and the results of the hydrogeological and geotechnical investigations, that the facility is reasonably expected to result in violations of groundwater standards and criteria otherwise.

(c) The owner or operator shall provide financial assurance for closing of the facility in accordance with the requirements of s. 403.7125. The financial assurance shall cover

the cost of closing the facility and 5 years of long-term care after closing, unless the department determines, based upon hydrogeologic conditions, the types of wastes received, or the groundwater monitoring results, that a different long-term care period is appropriate. However, unless the owner or operator of the facility is a local government, the escrow account described in s. 403.7125(2) ~~s. 403.7125(3)~~ may not be used as a financial assurance mechanism.

(d) The department shall establish training requirements for operators of facilities, and shall work with the State University System or other providers to assure that adequate training courses are available. The department shall also assist the Florida Home Builders Association in establishing a component of its continuing education program to address proper handling of construction and demolition debris, including best management practices for reducing contamination of the construction and demolition debris waste stream.

(e) The issuance of a permit under this subsection does not obviate the need to comply with all applicable zoning and land use regulations.

(f) A permit is not required under this section for the disposal of construction and demolition debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

(g) It is the policy of the Legislature to encourage facilities to recycle. The department shall establish criteria and guidelines that encourage recycling where practical and provide for the use of recycled materials in a manner that

protects the public health and the environment. Facilities are authorized to recycle, provided such activities do not conflict with such criteria and guidelines.

(h) The department shall ensure that the requirements of this section are applied and interpreted consistently throughout the state. In accordance with s. 20.255, the Division of Waste Management shall direct the district offices and bureaus on matters relating to the interpretation and applicability of this section.

(i) The department shall provide notice of receipt of a permit application for the initial construction of a construction and demolition debris disposal facility to the local governments having jurisdiction where the facility is to be located.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a hearing prior to December 31, 2006 ~~1996~~, that some or all of the wood material described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction of such county. The county may make such a determination only if it finds that, prior to June 1, 2006 ~~1996~~, the county has established an adequate method for the use or recycling of such wood material at an existing or proposed solid

waste management facility that is permitted or authorized by the department on June 1, 2006 ~~1996~~. The county shall not be required to hold a hearing if the county represents that it previously has held a hearing for such purpose, nor shall the county be required to hold a hearing if the county represents that it previously has held a public meeting or hearing that authorized such method for the use or recycling of trash or other nonputrescible waste materials and if the county further represents that such materials include those materials described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~. The county shall provide written notice of its determination to the department by no later than December 31, 2006 ~~1996~~; thereafter, the wood materials described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction of such county. The county may withdraw or revoke its determination at any time by providing written notice to the department.

(k) Brazilian pepper and other invasive exotic plant species as designated by the department resulting from eradication projects may be processed at permitted construction and demolition debris recycling facilities or disposed of at permitted construction and demolition debris disposal facilities or Class III facilities. The department may adopt rules to implement this paragraph.

(10) ~~(13)~~ If the department and a local government independently require financial assurance for the closure of a privately owned solid waste management facility, the department

and that local government shall enter into an interagency agreement that will allow the owner or operator to provide a single financial mechanism to cover the costs of closure ~~and any required long-term care~~. The financial mechanism may provide for the department and local government to be cobeneficiaries or copayees, but shall not impose duplicative financial requirements on the owner or operator. These closure costs must include at least the minimum required by department rules and must also include any additional costs required by local ordinance or regulation.

(11) ~~(14)~~ Before or on the same day of filing with the department of an application for a permit to construct or substantially modify a solid waste management facility, the applicant shall notify the local government having jurisdiction over the facility of the filing of the application. The applicant also shall publish notice of the filing of the application in a newspaper of general circulation in the area where the facility will be located. Notice shall be given and published in accordance with applicable department rules. The department shall not issue the requested permit until the applicant has provided the department with proof that the notices required by this subsection have been given. Issuance of a permit does not relieve an applicant from compliance with local zoning or land use ordinances, or with any other law, rules, or ordinances.

(12) ~~(15)~~ Construction and demolition debris must be separated from the solid waste stream and segregated in separate

locations at a solid waste disposal facility or other permitted site.

(13) ~~(16)~~ No facility, solely by virtue of the fact that it uses processed yard trash or clean wood or paper waste as a fuel source, shall be considered to be a solid waste disposal facility.

Section 15. Section 403.7071, Florida Statutes, is created to read:

403.7071 Management of storm-generated debris.--Solid waste generated as a result of a storm event that is the subject of an emergency order issued by the department may be managed as follows:

(1) The Department of Environmental Protection may issue field authorizations for staging areas in those counties affected by a storm event. Such staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. Field authorizations may be requested by providing a notice to the local office of the department containing a description of the design and operation of the staging area; the location of the staging area; and the name, address, and telephone number of the site manager. Field authorizations also may be issued by the department staff without prior notice. Written records of all field authorizations shall be created and maintained by department staff. Field authorizations may include specific conditions for the operation and closure of the staging area and shall include a required closure date. A local government shall avoid locating a staging area in wetlands and

other surface waters to the greatest extent possible, and the area that is used or affected by a staging area must be fully restored upon cessation of use of the area.

(2) Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, or a permitted construction and demolition debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.

(3) Construction and demolition debris that is mixed with other storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. Construction and demolition debris that is source-separated or is separated from other hurricane-generated debris at an authorized staging area, or at another area specifically authorized by the department, may be managed at a permitted construction and demolition debris disposal or recycling facility upon approval by the department of the methods and operational practices used to inspect the waste during segregation.

(4) Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable using techniques and personnel meeting relevant federal requirements.

(5) Local governments may conduct the burning of storm-generated yard trash and other vegetative debris in air-curtain

incinerators without prior notice to the department. Demolition debris may also be burned in air-curtain incinerators if the material is limited to untreated wood. Within 10 days after commencing such burning, the local government shall notify the department in writing describing the general nature of the materials burned; the location and method of burning; and the name, address, and telephone number of the representative of the local government to contact concerning the work. The operator of the air-curtain incinerator is subject to any requirement to obtain an open-burning authorization from the Division of Forestry or any other agency empowered to grant such authorization.

Section 16. Section 403.708, Florida Statutes, is amended to read:

403.708 Prohibition; penalty.--

(1) No person shall:

(a) Place or deposit any solid waste in or on the land or waters located within the state except in a manner approved by the department and consistent with applicable approved programs of counties or municipalities. However, nothing in this act shall be construed to prohibit the disposal of solid waste without a permit as provided in s. 403.707(2).

(b) Burn solid waste except in a manner prescribed by the department and consistent with applicable approved programs of counties or municipalities.

(c) Construct, alter, modify, or operate a solid waste management facility or site without first having obtained from the department any permit required by s. 403.707.

(2) No beverage shall be sold or offered for sale within the state in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(3) For purposes of subsections (2), (9), and (10):

~~(a) "Degradable," with respect to any material, means that such material, after being discarded, is capable of decomposing to components other than heavy metals or other toxic substances, after exposure to bacteria, light, or outdoor elements.~~

(a) ~~(b)~~ "Beverage" means soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drinks; soft drinks, whether or not carbonated; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink.

(b) ~~(c)~~ "Beverage container" means an airtight container which at the time of sale contains 1 gallon or less of a beverage, or the metric equivalent of 1 gallon or less, and which is composed of metal, plastic, or glass or a combination thereof.

(4) The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may impose a fine of not more than $100 on any person currently licensed pursuant to s. 561.14 for each violation of the provisions of subsection (2). If the violation is of a continuing nature, each day during which such violation occurs shall constitute a separate and distinct offense and shall be subject to a separate fine.

(5) The Department of Agriculture and Consumer Services may impose a fine of not more than $100 on any person not

currently licensed pursuant to s. 561.14 for each violation of the provisions of subsection (2). If the violation is of a continuing nature, each day during which such violation occurs shall constitute a separate and distinct offense and shall be subject to a separate fine.

(6) Fifty percent of each fine collected pursuant to subsections (4) and (5) shall be deposited into the Solid Waste Management Trust Fund. The balance of fines collected pursuant to subsection (4) shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund for the use of the division for inspection and enforcement of the provisions of this section. The balance of fines collected pursuant to subsection (5) shall be deposited into the General Inspection Trust Fund for the use of the Department of Agriculture and Consumer Services for inspection and enforcement of the provisions of this section.

(7) The Division of Alcoholic Beverages and Tobacco and the Department of Agriculture and Consumer Services shall coordinate their responsibilities under the provisions of this section to ensure that inspections and enforcement are accomplished in an efficient, cost-effective manner.

(8) A person may not distribute, sell, or expose for sale in this state any plastic bottle or rigid container intended for single use unless such container has a molded label indicating the plastic resin used to produce the plastic container. The label must appear on or near the bottom of the plastic container product and be clearly visible. This label must consist of a number placed inside a triangle and letters placed below the triangle. The triangle must be equilateral and must be formed by

three arrows, and, in the middle of each arrow, there must be a rounded bend that forms one apex of the triangle. The pointer, or arrowhead, of each arrow must be at the midpoint of a side of the triangle, and a short gap must separate each pointer from the base of the adjacent arrow. The three curved arrows that form the triangle must depict a clockwise path around the code number. Plastic bottles of less than 16 ounces, rigid plastic containers of less than 8 ounces, and plastic casings on lead-acid storage batteries are not required to be labeled under this section. The numbers and letters must be as follows:

(a) For polyethylene terephthalate, the letters "PETE" and the number 1.

(b) For high-density polyethylene, the letters "HDPE" and the number 2.

(c) For vinyl, the letter "V" and the number 3.

(d) For low-density polyethylene, the letters "LDPE" and the number 4.

(e) For polypropylene, the letters "PP" and the number 5.

(f) For polystyrene, the letters "PS" and the number 6.

(g) For any other, the letters "OTHER" and the number 7.

(9) No person shall distribute, sell, or expose for sale in this state any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials which are environmentally compatible.

(10) The packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974, other than as expressly provided in this act.

(11) Violations of this part or rules, regulations, permits, or orders issued thereunder by the department and violations of approved local programs of counties or municipalities or rules, regulations, or orders issued thereunder shall be punishable by a civil penalty as provided in s. 403.141.

(12) The department or any county or municipality may also seek to enjoin the violation of, or enforce compliance with, this part or any program adopted hereunder as provided in s. 403.131.

(13) In accordance with the following schedule, no person who knows or who should know of the nature of such solid waste shall dispose of such solid waste in landfills:

(a) Lead-acid batteries~~, after January 1, 1989~~. Lead-acid batteries also may ~~shall~~ not be disposed of in any waste-to-energy facility ~~after January 1, 1989~~. To encourage proper collection and recycling, all persons who sell lead-acid batteries at retail shall accept used lead-acid batteries as trade-ins for new lead-acid batteries.

(b) Used oil~~, after October 1, 1988~~.

(c) Yard trash~~, after January 1, 1992,~~ except in lined ~~unlined~~ landfills classified by department rule as Class I landfills. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area

provides and maintains separate yard trash composting facilities. The department recognizes that incidental amounts of yard trash may be disposed of in Class I ~~lined~~ landfills. In any enforcement action taken pursuant to this paragraph, the department shall consider the difficulty of removing incidental amounts of yard trash from a mixed solid waste stream.

(d) White goods~~, after January 1, 1990~~.

~~Prior to the effective dates specified in paragraphs (a)-(d), the department shall identify and assist in developing alternative disposal, processing, or recycling options for the solid wastes identified in paragraphs (a)-(d).~~

Section 17. Section 403.709, Florida Statutes, is amended to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.--There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) ~~From~~ The annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act, shall be used for the following purposes:

(a) ~~(1) Up to 40 percent shall be used for~~ Funding solid waste activities of the department and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.

(b) ~~(2) Up to 4.5 percent shall be used for~~ Funding research and training programs relating to solid waste

management through the Center for Solid and Hazardous Waste Management and other organizations which can reasonably demonstrate the capability to carry out such projects.

(c) ~~(3) Up to 11 percent shall be used for~~ Funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control. This distribution shall be annually transferred to the General Inspection Trust Fund in the Department of Agriculture and Consumer Services to be used for mosquito control, especially control of West Nile Virus.

(d) ~~(4) Up to 4.5 percent shall be used for~~ Funding to the Department of Transportation for litter prevention and control programs ~~coordinated by Keep Florida Beautiful, Inc~~.

(e) ~~(5) A minimum of 40 percent shall be used for~~ Funding a competitive and innovative grant program pursuant to s. 403.7095 for activities relating to recycling and reducing the volume of municipal solid waste, including waste tires requiring final disposal.

(2) ~~(6)~~ The department shall recover to the use of the fund from the site owner or the person responsible for the accumulation of tires at the site, jointly and severally, all sums expended from the fund pursuant to this section to manage tires at an illegal waste tire site, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. If a court determines that the owner is unable or unwilling to comply with the rules adopted pursuant to this section or s. 403.717, the court may authorize the department to take

possession and control of the waste tire site in order to protect the health, safety, and welfare of the community and the environment.

(3) ~~(7)~~ The department may impose a lien on the real property on which the waste tire site is located and the waste tires equal to the estimated cost to bring the tire site into compliance, including attorney's fees and court costs. Any owner whose property has such a lien imposed may release her or his property from any lien claimed under this subsection by filing with the clerk of the circuit court a cash or surety bond, payable to the department in the amount of the estimated cost of bringing the tire site into compliance with department rules, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less. No lien provided by this subsection shall continue for a period longer than 4 years after the completion of the abatement action unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The department may take action to enforce the lien in the same manner used for construction liens under part I of chapter 713.

(4) ~~(8)~~ This section does not limit the use of other remedies available to the department.

Section 18. Subsection (5) of section 403.7095, Florida Statutes, is amended to read:

403.7095 Solid waste management grant program.--

(5) From the funds made available pursuant to s. 403.709(1)(e) ~~s. 403.709(5)~~ for the grant program created by this section, the following distributions shall be made:

(a) Up to 15 percent for the program described in subsection (1);

(b) Up to 35 percent for the program described in subsection (3); and

(c) Up to 50 percent for the program described in subsection (4).

Section 19. Section 403.7125, Florida Statutes, is amended to read:

403.7125 Financial assurance for closure ~~Landfill management escrow account~~.--

~~(1) As used in this section:~~

~~(a) "Landfill" means any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 that receives solid waste for disposal in or upon land other than a land spreading site, injection well, or a surface impoundment.~~

~~(b) "Closure" means the ceasing operation of a landfill and securing such landfill so that it does not pose a significant threat to public health or the environment and includes long-term monitoring and maintenance of a landfill.~~

~~(c) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land whereon a landfill is or has been located and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of a landfill.~~

(1) ~~(2)~~ Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law. As used in this section, the

term "owner or operator" means any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

(2) ~~(3)~~ The owner or operator of a landfill owned or operated by a local or state government or the Federal Government shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property, as described in s. 403.707(2), is exempt from the provisions of this section.

(a) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet state and federal landfill closure requirements.

(b) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the department an annual audit of the account. The audit shall be conducted by an independent certified public accountant. Failure to collect or report such revenue, except as allowed in subsection (3) ~~(4)~~, is a noncriminal violation punishable by a fine of not more than $5,000 for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for

proper and complete closure, as determined by the department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund or the appropriate solid waste fund of the local government of jurisdiction.

(c) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure requirements. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

(d) The provisions of s. 212.055 that relate to raising of revenues for landfill closure or long-term maintenance do not relieve a landfill owner or operator from the obligations of this section.

(e) The owner or operator of any landfill that had established an escrow account in accordance with this section and the conditions of its permit prior to January 1, 2006, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government.

(3) ~~(4)~~ An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide financial assurance to ~~establish proof of financial responsibility with~~ the department in lieu of the

requirements of subsection (2) ~~(3)~~. An owner or operator of any other landfill, or any other solid waste management facility designated by department rule, shall provide financial assurance to the department for the closure of the facility. Such financial assurance ~~proof~~ may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with applicable ~~landfill~~ closure requirements. The owner or operator shall estimate such costs to the satisfaction of the department.

(4) ~~(5)~~ This section does not repeal, limit, or abrogate any other law authorizing local governments to fix, levy, or charge rates, fees, or charges for the purpose of complying with state and federal landfill closure requirements.

(5) ~~(6)~~ The department shall adopt rules to implement this section.

Section 20. Section 403.716, Florida Statutes, is amended to read:

403.716 Training of operators of solid waste management and other facilities.--

(1) The department shall establish qualifications for, and encourage the development of training programs for, operators of landfills, coordinators of local recycling programs, ~~operators of waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities,~~ and operators of other solid waste management facilities.

(2) The department shall work with accredited community colleges, career centers, state universities, and private

institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(3) A person may not perform the duties of an operator of a landfill~~, or perform the duties of an operator of a waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility,~~ unless she or he has completed an operator training course approved by the department or she or he has qualified as an interim operator in compliance with requirements established by the department by rule. An owner of a landfill~~, waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility~~ may not employ any person to perform the duties of an operator unless such person has completed an approved landfill~~, waste-to-energy facility, biomedical waste incinerator, or mobile soil thermal treatment unit or facility~~ operator training course, as appropriate, or has qualified as an interim operator in compliance with requirements established by the department by rule. The department may establish by rule operator training requirements for other solid waste management facilities and facility operators.

(4) The department has authority to adopt minimum standards and other rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. The department shall ensure the safe, healthy, and lawful operation of solid waste management facilities in this state. The department may establish by rule various classifications for operators to cover

the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at such facilities.

(5) For purposes of this section, the term "operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or period of operation during any part of the day.

Section 21. Section 403.717, Florida Statutes, is amended to read:

403.717 Waste tire and lead-acid battery requirements.--

(1) For purposes of this section and ss. 403.718 and 403.7185:

(a) "Department" means the Department of Environmental Protection.

(b) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, mopeds, or farm tractors and trailers.

(c) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.

(d) "Waste tire" means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. "Waste tire" includes, but is not limited to, used tires and processed

tires. The term does not include solid rubber tires and tires that are inseparable from the rim.

(e) "Waste tire collection center" means a site where waste tires are collected from the public prior to being offered for recycling and where fewer than 1,500 tires are kept on the site on any given day.

(f) "Waste tire processing facility" means a site where equipment is used to treat waste tires mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal ~~recapture reusable byproducts from waste tires or to cut, burn, or otherwise alter waste tires so that they are no longer whole~~. The term includes mobile waste tire processing equipment.

(g) "Waste tire site" means a site at which 1,500 or more waste tires are accumulated.

(h) "Lead-acid battery" means a ~~those~~ lead-acid battery ~~batteries~~ designed for use in motor vehicles, vessels, and aircraft, and includes such batteries when sold new as a component part of a motor vehicle, vessel, or aircraft, but not when sold to recycle components.

(i) "Indoor" means within a structure that ~~which~~ excludes rain and public access and would control air flows in the event of a fire.

(j) "Processed tire" means a tire that has been treated mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal.

(k) "Used tire" means a waste tire which has a minimum tread depth of 3/32 inch or greater and is suitable for use on a motor vehicle.

(2) The owner or operator of any waste tire site shall provide the department with information concerning the site's location, size, and the approximate number of waste tires that are accumulated at the site and shall initiate steps to comply with subsection (3).

(3)(a) A person may not maintain a waste tire site unless such site is:

1. An integral part of the person's permitted waste tire processing facility; or

2. Used for the storage of waste tires prior to processing and is located at a permitted solid waste management facility.

(b) It is unlawful for any person to dispose of waste tires or processed tires in the state except at a permitted solid waste management facility. Collection or storage of waste tires at a permitted waste tire processing facility or waste tire collection center prior to processing or use does not constitute disposal, provided that the collection and storage complies with rules established by the department.

(c) Whole waste tires may not be deposited in a landfill as a method of ultimate disposal.

(d) A person may not contract with a waste tire collector for the transportation, disposal, or processing of waste tires unless the collector is registered with the department or exempt from requirements provided under this section. Any person who contracts with a waste tire collector for the transportation of

more than 25 waste tires per month from a single business location must maintain records for that location and make them available for review by the department or by law enforcement officers, which records must contain the date when the tires were transported, the quantity of tires, the registration number of the collector, and the name of the driver.

(4) The department shall adopt rules to carry out the provisions of this section and s. 403.718. Such rules shall:

(a) Provide for the administration or revocation of waste tire processing facility permits, including mobile processor permits;

(b) Provide for the administration or revocation of waste tire collector registrations, the fees for which may not exceed $50 per vehicle registered annually;

(c) Provide for the administration or revocation of waste tire collection center permits, the fee for which may not exceed $250 annually;

(d) Set standards, including financial assurance standards, for waste tire processing facilities and associated waste tire sites, waste tire collection centers, waste tire collectors, and for the storage of waste tires and processed tires, including storage indoors;

(e) The department may by rule exempt not-for-hire waste tire collectors and processing facilities from financial assurance requirements;

(f) Authorize the final disposal of waste tires at a permitted solid waste disposal facility provided the tires have

been cut into sufficiently small parts to assure their proper disposal; and

(g) Allow waste tire material which has been cut into sufficiently small parts to be used as daily cover material for a landfill.

~~(5) A permit is not required for tire storage at:~~

~~(a) A tire retreading business where fewer than 1,500 waste tires are kept on the business premises;~~

~~(b) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,500 of these tires are kept on the business premises; or~~

~~(c) A retail tire-selling business which is serving as a waste tire collection center if fewer than 1,500 waste tires are kept on the business premises.~~

(5) ~~(6)~~ (a) The department shall encourage the voluntary establishment of waste tire collection centers at retail tire-selling businesses, waste tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of waste tires.

(b) The department is authorized to establish an incentives program for individuals to encourage them to return their waste tires to a waste tire collection center. The incentives used by the department may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the department determines will promote collection, reuse, volume reduction, and proper disposal of waste tires.

(c) The department may contract with a promotion company to administer the incentives program.

Section 22. Section 403.7221, Florida Statutes, is transferred, renumbered as section 403.70715, Florida Statutes, and amended to read:

403.70715 ~~403.7221~~ Research, development, and demonstration permits.--

(1) The department may issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility, including any hazardous waste management facility, who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been promulgated. Permits shall:

(a) Provide for construction and operation of the facility for not longer than 3 years ~~1 year~~, renewable no more than 3 times.

(b) Provide for the receipt and treatment by the facility of only those types and quantities of solid waste which the department deems necessary for purposes of determining the performance capabilities of the technology or process and the effects of such technology or process on human health and the environment.

(c) Include requirements the department deems necessary which may include monitoring, operation, testing, financial responsibility, closure, and remedial action.

(2) The department may apply the criteria set forth in this section in establishing the conditions of each permit

without separate establishment of rules implementing such criteria.

(3) For the purpose of expediting review and issuance of permits under this section, the department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements, except that there shall be no modification or waiver of regulations regarding financial responsibility or of procedures established regarding public participation.

(4) The department may order an immediate termination of all operations at the facility at any time upon a determination that termination is necessary to protect human health and the environment.

Section 23. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.--

(2) No variance shall be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715 ~~s. 403.7221~~.

Section 24. Section 403.722, Florida Statutes, is amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.--

(1) Each person who intends to or is required to construct, modify, operate, or close a hazardous waste disposal,

storage, or treatment facility shall obtain a construction permit, operation permit, postclosure permit, clean closure plan approval, or corrective action permit from the department prior to constructing, modifying, operating, or closing the facility. By rule, the department may provide for the issuance of a single permit instead of any two or more hazardous waste facility permits.

(2) Any owner or operator of a hazardous waste facility in operation on the effective date of the department rule listing and identifying hazardous wastes shall file an application for a temporary operation permit within 6 months after the effective date of such rule. The department, upon receipt of a properly completed application, shall identify any department rules which are being violated by the facility and shall establish a compliance schedule. However, if the department determines that an imminent hazard exists, the department may take any necessary action pursuant to s. 403.726 to abate the hazard. The department shall issue a temporary operation permit to such facility within the time constraints of s. 120.60 upon submission of a properly completed application which is in conformance with this subsection. Temporary operation permits for such facilities shall be issued for up to 3 years only. Upon termination of the temporary operation permit and upon proper application by the facility owner or operator, the department shall issue an operation permit for such existing facilities if the applicant has corrected all of the deficiencies identified in the temporary operation permit and is in compliance with all other rules adopted pursuant to this act.

(3) ~~Permit~~ Applicants shall provide any information that ~~which~~ will enable the department to determine that the proposed construction, modification, operation, ~~or~~ closure, or corrective action will comply with this act and any applicable rules. In no instance shall any person construct, modify, operate, or close a facility or perform corrective actions at a facility in contravention of the standards, requirements, or criteria for a hazardous waste facility. Authorizations ~~Permits~~ issued under this section may include any permit conditions necessary to achieve compliance with applicable hazardous waste rules and necessary to protect human health and the environment.

(4) The department may require, in an ~~a permit~~ application, submission of information concerning matters specified in s. 403.721(6) as well as information respecting:

(a) Estimates of the composition, quantity, and concentration of any hazardous waste identified or listed under this act or combinations of any such waste and any other solid waste~~,~~ proposed to be disposed of, treated, transported, or stored and the time, frequency, or rate at which such waste is proposed to be disposed of, treated, transported, or stored; and

(b) The site to which such hazardous waste or the products of treatment of such hazardous waste will be transported and at which it will be disposed of, treated, or stored.

(5) An authorization ~~A permit~~ issued pursuant to this section is not a vested right. The department may revoke or modify any such authorization ~~permit~~.

(a) Authorizations ~~Permits~~ may be revoked for failure of the holder to comply with the provisions of this act, the terms

of the authorization ~~permit~~, the standards, requirements, or criteria adopted pursuant to this act, or an order of the department; for refusal by the holder to allow lawful inspection; for submission by the holder of false or inaccurate information in the permit application; or if necessary to protect the public health or the environment.

(b) Authorizations ~~Permits~~ may be modified, upon request of the holder ~~permittee~~, if such modification is not in violation of this act or department rules or if the department finds the modification necessary to enable the facility to remain in compliance with this act and department rules.

(c) An owner or operator of a hazardous waste facility in existence on the effective date of a department rule changing an exemption or listing and identifying the hazardous wastes that ~~which~~ require that facility to be permitted who notifies the department pursuant to s. 403.72, and who has applied for a permit pursuant to subsection (2), may continue to operate until ~~be~~ issued a temporary operation permit. If such owner or operator intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.

(6) A hazardous waste facility permit issued pursuant to this section shall satisfy the permit requirements of s. 403.707(1). The permit exemptions provided in s. 403.707(2) shall not apply to hazardous waste.

(7) The department may establish ~~permit~~ application procedures for hazardous waste facilities, which procedures may vary based on differences in amounts, types, and concentrations

of hazardous waste and on differences in the size and location of facilities and which procedures may take into account permitting procedures of other laws not in conflict with this act.

(8) For authorizations ~~permits~~ required by this section, the department may require that a fee be paid and may establish, by rule, a fee schedule based on the degree of hazard and the amount and type of hazardous waste disposed of, stored, or treated at the facility.

(9) It shall not be a requirement for the issuance of ~~such~~ a hazardous waste authorization ~~permit~~ that the facility complies with an adopted local government comprehensive plan, local land use ordinances, zoning ordinances or regulations, or other local ordinances. However, such an authorization ~~a permit~~ issued by the department shall not override adopted local government comprehensive plans, local land use ordinances, zoning ordinances or regulations, or other local ordinances.

(10) Notwithstanding ss. 120.60(1) and 403.815:

(a) The time specified by law for permit review shall be tolled by the request of the department for publication of notice of proposed agency action to issue a permit for a hazardous waste treatment, storage, or disposal facility and shall resume 45 days after receipt by the department of proof of publication. If, within 45 days after publication of the notice of the proposed agency action, the department receives written notice of opposition to the intention of the agency to issue such permit and receives a request for a hearing, the department shall provide for a hearing pursuant to ss. 120.569 and 120.57,

if requested by a substantially affected party, or an informal public meeting, if requested by any other person. The failure to request a hearing within 45 days after publication of the notice of the proposed agency action constitutes a waiver of the right to a hearing under ss. 120.569 and 120.57. The permit review time period shall continue to be tolled until the completion of such hearing or meeting and shall resume within 15 days after conclusion of a public hearing held on the application or within 45 days after the recommended order is submitted to the agency and the parties, whichever is later.

(b) Within 60 days after receipt of an application for a hazardous waste facility permit, the department shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the department is permitted by law to require. The failure to correct an error or omission or to supply additional information shall not be grounds for denial of the permit unless the department timely notified the applicant within the 60-day period, except that this paragraph does not prevent the department from denying an application if the department does not possess sufficient information to ensure that the facility is in compliance with applicable statutes and rules.

(c) The department shall approve or deny each hazardous waste facility permit within 135 days after receipt of the original application or after receipt of the requested additional information or correction of errors or omissions. However, the failure of the department to approve or deny within the 135-day time period does not result in the automatic

approval or denial of the permit and does not prevent the inclusion of specific permit conditions which are necessary to ensure compliance with applicable statutes and rules. If the department fails to approve or deny the permit within the 135-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

(11) Hazardous waste facility operation permits shall be issued for no more than 5 years.

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published in a newspaper of general circulation in the county in which the facility is located or is proposed to be located. Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county. The notice shall contain:

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for a permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(13) A permit for the construction, modification, or operation of a hazardous waste facility which initially was issued under authority of this section, may not be transferred by the permittee to any other entity, except in conformity with the requirements of this subsection.

(a) At least 30 days prior to the sale or legal transfer of a permitted facility, the permittee shall file with the department an application for transfer of the permits on such

form as the department shall establish by rule. The form must be completed with the notarized signatures of both the transferring permittee and the proposed permittee.

(b) The department shall approve the transfer of a permit unless it determines that the proposed permittee has not provided reasonable assurances that the proposed permittee has the administrative, technical, and financial capability to properly satisfy the requirements and conditions of the permit, as determined by department rule. The determination shall be limited solely to the ability of the proposed permittee to comply with the conditions of the existing permit, and it shall not concern the adequacy of the permit conditions. If the department proposes to deny the transfer, it shall provide both the transferring permittee and the proposed permittee a written objection to such transfer together with notice of a right to request a proceeding on such determination under chapter 120.

(c) Within 90 days after receiving a properly completed application for transfer of permit, the department shall issue a final determination. The department may toll the time for making a determination on the transfer by notifying both the transferring permittee and the proposed permittee that additional information is required to adequately review the transfer request. Such notification shall be served within 30 days after receipt of an application for transfer of permit, completed pursuant to paragraph (a). However, the failure of the department to approve or deny within the 90-day time period does not result in the automatic approval or denial of the transfer. If the department fails to approve or deny the transfer within

the 90-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

(d) The transferring permittee is encouraged to apply for a permit transfer well in advance of the sale or legal transfer of a permitted facility. However, the transfer or the permit shall not be effective prior to the sale or legal transfer of the facility.

(e) Until the transfer of the permit is approved by the department, the transferring permittee and any other person constructing, operating, or maintaining the permitted facility shall be liable for compliance with the terms of the permit. Nothing in this section shall relieve the transferring permittee of liability for corrective actions that may be required as a result of any violations occurring prior to the legal transfer of the permit.

Section 25. Subsection (2) of section 403.7226, Florida Statutes, is amended to read:

403.7226 Technical assistance by the department.--The department shall:

(2) Identify short-term needs and long-term needs for hazardous waste management for the state on the basis of the information gathered through the local hazardous waste management assessments and other information from state and federal regulatory agencies and sources. The state needs assessment must be ongoing and must be updated when new data concerning waste generation and waste management technologies

become available. ~~The department shall annually send a copy of this assessment to the Governor and to the Legislature.~~

Section 26. Subsection (3) of section 403.724, Florida Statutes, is amended to read:

403.724 Financial responsibility.--

(3) The amount of financial responsibility required shall be approved by the department upon each issuance, renewal, or modification of a hazardous waste facility authorization ~~permit~~. Such factors as inflation rates and changes in operation may be considered when approving financial responsibility for the duration of the authorization ~~permit~~. The Office of Insurance Regulation of the Department of Financial Services ~~Commission~~ shall be available to assist the department in making this determination. In approving or modifying the amount of financial responsibility, the department shall consider:

(a) The amount and type of hazardous waste involved;

(b) The probable damage to human health and the environment;

(c) The danger and probable damage to private and public property near the facility;

(d) The probable time that the hazardous waste and facility involved will endanger the public health, safety, and welfare or the environment; and

(e) The probable costs of properly closing the facility and performing corrective action.

Section 27. Section 403.7255, Florida Statutes, is amended to read:

403.7255 Placement of signs ~~Department to adopt rules~~.--

(1) ~~The department shall adopt rules which establish requirements and procedures for the placement of~~ Signs must be placed by the owner or operator at ~~sites which may have been contaminated by hazardous wastes. Sites shall include~~ any site in the state which ~~that~~ is listed or proposed for listing on the Superfund Site List of the United States Environmental Protection Agency or any site identified by the department as a ~~suspected or confirmed contaminated~~ site contaminated by hazardous waste where there is ~~may be~~ a risk of exposure to the public. The requirements of this section shall not apply to sites reported under ss. 376.3071 and 376.3072. The department shall establish requirements and procedures for the placement of signs, and may do so in rules, permits, orders, or other authorizations. The authorization ~~rules~~ shall establish the appropriate size for such signs, which size shall be no smaller than 2 feet by 2 feet, and shall provide in clearly legible print appropriate warning language for the waste or other materials at the site and a telephone number which may be called for further information.

(2) Violations of this act are punishable as provided in s. 403.161(4).

(3) The provisions of this act are independent of and cumulative to any other requirements and remedies in this chapter or chapter 376, or any rules promulgated thereunder.

Section 28. Subsection (5) of section 403.726, Florida Statutes, is amended to read:

403.726 Abatement of imminent hazard caused by hazardous substance.--

(5) The department may issue a permit or order requiring prompt abatement of an imminent hazard.

Section 29. Subsection (8) of section 403.7265, Florida Statutes, is amended to read:

403.7265 Local hazardous waste collection program.--

(8) The department has the authority to establish an additional local project grant program enabling a local hazardous waste collection center grantee to receive funding for unique projects that improve the collection and lower the incidence of improper management of conditionally exempt or household hazardous waste. Eligible local governments may receive up to $50,000 in grant funds for these unique and innovative projects, provided they match 25 percent of the grant amount. If the department finds that the project has statewide applicability and immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required. This grant will not count toward the $100,000 maximum grant amount for development of a collection center.

Section 30. Section 403.885, Florida Statutes, is amended to read:

403.885 Water Projects ~~Stormwater management; wastewater management; and Water Restoration~~ Grant Program.--

(1) The Department of Environmental Protection shall administer a grant program to use funds transferred pursuant to s. 212.20 to the Ecosystem Management and Restoration Trust Fund or other moneys as appropriated by the Legislature for stormwater management, wastewater management, ~~and~~ water restoration, and other water projects as specifically

appropriated by the Legislature ~~project grants~~. Eligible recipients of such grants include counties, municipalities, water management districts, and special districts that have legal responsibilities for water quality improvement, water management, storm water management, wastewater management, and lake and river water restoration projects. ~~Drinking water projects are not eligible for funding pursuant to this section.~~

(2) The grant program shall provide for the evaluation of annual grant proposals. The department shall evaluate such proposals to determine if they:

(a) Protect public health and the environment.

(b) Implement plans developed pursuant to the Surface Water Improvement and Management Act created in part IV of chapter 373, other water restoration plans required by law, management plans prepared pursuant to s. 403.067, or other plans adopted by local government for water quality improvement and water restoration.

~~(3) In addition to meeting the criteria in subsection (2), annual grant proposals must also meet the following requirements:~~

~~(a) An application for a stormwater management project may be funded only if the application is approved by the water management district with jurisdiction in the project area. District approval must be based on a determination that the project provides a benefit to a priority water body.~~

~~(b) Except as provided in paragraph (c), an application for a wastewater management project may be funded only if:~~

~~1. The project has been funded previously through a line item in the General Appropriations Act; and~~

~~2. The project is under construction.~~

~~(c) An application for a wastewater management project that would qualify as a water pollution control project and activity in s. 403.1838 may be funded only if the project sponsor has submitted an application to the department for funding pursuant to that section.~~

~~(4) All project applicants must provide local matching funds as follows:~~

~~(a) An applicant for state funding of a stormwater management project shall provide local matching funds equal to at least 50 percent of the total cost of the project; and~~

~~(b) An applicant for state funding of a wastewater management project shall provide matching funds equal to at least 25 percent of the total cost of the project.~~

~~The requirement for matching funds may be waived if the applicant is a financially disadvantaged small local government as defined in subsection (5).~~

~~(5) Each fiscal year, at least 20 percent of the funds available pursuant to this section shall be used for projects to assist financially disadvantaged small local governments. For purposes of this section, the term "financially disadvantaged small local government" means a municipality having a population of 7,500 or less, a county having a population of 35,000 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as~~

~~determined by the United States Department of Commerce, or a county in an area designated by the Governor as a rural area of critical economic concern pursuant to s. 288.0656. Grants made to these eligible local governments shall not require matching local funds.~~

~~(6) Each year, stormwater management and wastewater management projects submitted for funding through the legislative process shall be submitted to the department by the appropriate fiscal committees of the House of Representatives and the Senate. The department shall review the projects and must provide each fiscal committee with a list of projects that appear to meet the eligibility requirements under this grant program.~~

Section 31. Paragraph (e) of subsection (3) of section 373.1961, Florida Statutes, is amended to read:

373.1961 Water production; general powers and duties; identification of needs; funding criteria; economic incentives; reuse funding.--

(3) FUNDING.--

(e) Applicants for projects that may receive funding assistance pursuant to the Water Protection and Sustainability Program shall, at a minimum, be required to pay 60 percent of the project's construction costs. The water management districts may, at their discretion, totally or partially waive this requirement for projects sponsored by financially disadvantaged small local governments ~~as defined in s. 403.885(4)~~. The water management districts or basin boards may, at their discretion,

use ad valorem or federal revenues to assist a project applicant in meeting the requirements of this paragraph.

Section 32. Sections 403.7075, 403.756, 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, Florida Statutes, are repealed.

Section 33. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7133 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Needelman offered the following:

Amendment (with directory and title amendments)

Between lines 2440 & 2441 insert:

Section 33. (1)(a) The Department of Environmental Protection shall conduct a study to determine the various sources of nitrogen input into the Wekiva River and associated springs contributing water to the river. The Department of Environmental Protection shall prepare a report recommending actions to be taken by the Department of Environmental Protection and the St. Johns Water Management District that will provide the best use of economic resources to reduce nitrogen inputs into the river and associated springs.

(b) The Department of Health shall contract for a study by an independent entity of sources of input of nitrogen from onsite sewage treatment and disposal systems into the Wekiva River and associated springs. The study shall measure the concentration of nitrates in the soil 10 feet and 20 feet below the drainage field of the onsite sewage treatment and disposal

systems. The contract shall require the entity to submit a report to the Department of Health describing the locations of such sources and amounts contributed by such sources and containing recommendations to reduce or eliminate nitrogen inputs from such sources. Rulemaking required by s. 369.318(2), Florida Statutes, shall be suspended until the completion of this study.

(c) The Department of Environmental Protection and the Department of Health shall submit copies of the reports to the President of the Senate and the Speaker of the House of Representatives before the 2007 Regular Session of the Legislature.

(2) The Department of Health shall develop proposed rules for a model proposal applying to operation and maintenance of onsite sewage treatment and disposal systems within the Wekiva Study Area or the Wekiva River Protection Area. At a minimum, the rules shall require each property owner in the Wekiva Study Area or the Wekiva River Protection Area having an onsite sewage treatment and disposal system to pump out the system at least once every 5 years.

(3) The sum of $250,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the 2006-2007 fiscal year to be used by the Department of Environmental Protection to conduct the study required under paragraph (1)(a).

(4) The sum of $250,000 is appropriated from the General Revenue Fund to the Department of Health for the 2006-2007 fiscal year to be used for purposes of the independent study the Department of Health is required to contract for under paragraph (1)(b).

Amendment No. 1

52

53 ========== T I T L E A M E N D M E N T ==========

54 Remove line 88 and insert:

55 requiring the Department of Environmental Protection to

56 conduct a study of sources of nitrogen input into the

57 Wekiva River and associated springs; requiring the

58 Department of Health to contract for an independent study

59 of sources of nitrogen input from onsite sewage treatment

60 and disposal systems into the Wekiva River and associated

61 springs; requiring reports; providing report requirements;

62 suspending certain department rulemaking until study

63 completion; requiring the Department of Environmental

64 Protection and Department of Health to submit copies of

65 the reports to the Legislature; requiring the Department

66 of Health to develop proposed rules for a model proposal

67 applying to operation and maintenance of onsite sewage

68 treatment and disposal systems in certain areas;

69 specifying a rule criterion; providing appropriations;

70 providing an effective date.

71

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 7133 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative(s) Needelman offered the following:

Amendment (title amendment)

Between lines 2440 & 2441 insert:

Section 33. Landfill redevelopment--

A closed Class I landfill, as defined by Department of Environmental Protection rule, which is substantially rehabilitated or remediated in such a manner that at least fifteen percent (15%) of residential units are affordable as defined in Section 420.0004, F.S., is not subject to the requirements of any building permit allocation system or other rate of growth regulation adopted pursuant to Chapter 380, Florida Statutes.

========== T I T L E A M E N D M E N T ==========

Between lines 87 & 88 insert:

ensuring that affordable housing is a part of certain redevelopment projects;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7159 CS PCB AG 06-03 Citrus Canker Disease Management
SPONSOR(S): Agriculture Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	10 Y, 0 N	Kaiser	Reese
1) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Davis	Dixon
2) State Resources Council		Kaiser	Hamby
3)			
4)			
5)			

SUMMARY ANALYSIS

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within 1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting. The eradication program has been stymied by lengthy legal battles and unprecedented weather conditions over the last few years. In January 2006, the United States Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

HB 7159 dismantles the current eradication plan codified in Florida statute and directs DACS to implement a comprehensive citrus health plan to minimize the impact of citrus pests and diseases to production and allow Florida's citrus to be marketed to other states and countries.

The bill establishes regulated zones around the perimeter of commercial citrus nurseries and prohibits the sale or movement of any citrus nursery stock under certain conditions.

The bill directs DACS to relocate foundation source trees maintained by the Division of Plant Industry to protective sites outside of the commercial citrus growing region, providing authorization to spend existing funds from the Contracts and Grants Trust Fund to relocate the Citrus Budwood facilities for protection against citrus diseases.

HB 7159 preempts the removal and destruction of citrus plants to the state and provides a date certain after which all compensation claims, including those for the Shade Dade and Shade Florida programs, will no longer be honored. It also clarifies compensation is subject to a specific appropriation.

Finally, the bill permits the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used. The effective date of this bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

Safeguard individual liberty: The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within 1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting.

The eradication program was nearly halted in November, 2000, by a Broward County Circuit Court order. Additional court orders in May, 2002, from the same judge continued to restrict eradication activity. The judge had declared unconstitutional the statute passed by lawmakers in the 2002 session, requiring the department to remove not only infected trees, but also exposed trees located within 1,900 feet of infected ones.

Based on research conducted by Dr. Timothy Gottwald, a scientist with the United States Department of Agriculture (USDA), "exposed to infection" refers to citrus trees located within 1,900 feet of an infected tree. This term, "exposed to infection," was codified in statute during the 2002 legislative session. At the same time, the Legislature provided for a repeal of the definition effective July 1, 2005 with a mandatory review by the Legislature prior to that date.

Applying his order statewide, the judge also struck down the portion of the law that allows for search warrants for a county-wide area. In response, DACS now obtains individual search warrants to remove infected and exposed trees and to search nearby properties to determine the extent of the outbreak. However, prior to obtaining search warrants, DACS sends Public Information Officers (PIOs) door-to-door seeking homeowner permission for tree removal.

As a result of these legal actions, the program was working under severe constraints and the disease continued to spread in southeast Florida, and was even moved by property owners to several other counties.

Every order issued by the Broward Circuit Judge was subsequently overturned by the Fourth District Court of Appeal in West Palm Beach. The question of the constitutionality of the tree removal statute went before the Florida Supreme Court and the law was upheld in February, 2004.[1]

[1] *Haire v. Florida Department of Agriculture and Consumer Services, 870 So. 2d 774 (Fla. 2004)*

In addition to the legal delays, the spread of citrus canker bacteria was aided by the unprecedented hurricane seasons Florida experienced in 2004 and 2005. In January 2006, the United States Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease; a new management plan must be devised. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

Effects of Proposed Changes

The bill dismantles the current eradication plan codified in statute and directs DACS to implement a comprehensive citrus health plan to minimize the impact of citrus pests and diseases to production and allow for Florida to market its citrus to other states and countries. It further stipulates that such successor program to eradication maintain the agricultural lands designation for assessment purposes.

The bill prohibits the sale or movement of any citrus nursery stock, effective January 1, 2007, which has not been propagated or grown on a site approved by DACS at least one mile away from commercial citrus groves and within a protective structure approved by DACS. Citrus nurseries registered with DACS prior to April 1, 2006, are exempt from the one mile setback from commercial citrus groves while continuously operating at the April 1, 2006, location. However, these nurseries are required to propagate citrus within an approved protective structure.

DACS is given rule-making authority relating to conditions under which citrus nursery stock may be propagated, grown, sold or moved and the specifications for the approved site and protective structure.

The bill provides that certain types of citrus may be exempted from the regulations imposed in this legislation if the Citrus Budwood Technical Advisory Committee determines they pose no threat of introducing or spreading a citrus plant pest.

The bill authorizes DACS to establish regulated areas around the perimeter of commercial citrus nurseries established on sites after April 1, 2006, not to exceed a radius of one mile. The planting of citrus in an established regulated area is prohibited. The planting of citrus within a radius of one mile around commercial citrus nurseries established on sites prior to April 1, 2006, must be approved by DACS. Citrus plants within a regulated area that were planted prior to the establishment of the regulated area may remain unless they are determined to be infested or infected with citrus canker or citrus greening.

The bill authorizes DACS to require the removal of infected or infested citrus, non-approved planted citrus and citrus that has sprouted by natural means in regulated areas. The property owner is responsible for the removal of citrus planted without proper approval. An immediate final order (IFO) issued by DACS shall provide notice to the property owner that the citrus trees that are subject to the IFO must be removed and destroyed unless the property owner, no later than 10 days after delivery of the IFO, requests and obtains a stay of the IFO from the district court of appeal with jurisdiction to review such requests. The property owner is not required to seek a stay of the IFO from DACS prior to seeking the stay from the district court of appeal.

The bill preempts the removal and destruction of citrus plants pursuant to this section to the state. DACS is directed to relocate foundation source trees maintained by the Division of Plant Industry to protective sites located a minimum of ten miles from any commercial citrus grove. The bill authorizes DACS to expend existing funds from the Contracts and Grants Trust Fund for the purpose of relocating the foundation source trees.

The bill clarifies that compensation is subject to a specific appropriation in FY 2006-07 or prior years, and that claims for compensation under the Shade Dade or Shade Florida programs must be filed with DACS not later than December 31, 2007. After that date, all unfiled claims will expire, and the compensation section of statute will be repealed effective July 1, 2008.

Lastly, the bill permits the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used.

C. SECTION DIRECTORY:

Section 1: Amending s. 193.461, F.S.; maintains the agricultural lands designation for an eradication successor program for assessment purposes.

Section 2: Amending s. 581.184, F.S.; directs the Department of Agriculture and Consumer Services (DACS) to implement a comprehensive citrus health plan; eliminates the authority of DACS to remove and destroy citrus trees infected with citrus canker; deleting definitions and provisions relating to immediate final orders, notice to property owners, rulemaking authority, and posting of certain conforming orders; and, requiring certain law enforcement officers to maintain order under certain circumstances involving the citrus canker disease management process.

Section 3: Creating s. 581.1843, F.S.; provides requirements relating to the propagation and distribution of citrus effective January 1, 2007; provides rule-making authority to DACS; provides exemption of certain citrus from provisions of this section; requires DACS to establish regulated areas around the perimeter of commercial citrus nurseries; provides conditions for regulated areas; preempts regulation of removal or destruction of citrus plants to the state; directs DACS to relocate certain citrus trees maintained by the Division of Plant Industry; and, authorizes expenditure of funds from designated trust fund.

Section 4: Amending s. 581.1845, F.S.; revises the terms of the citrus canker eradication compensation program.

Section 5: Amending s. 120.80, F.S.; deletes a cross reference.

Section 6: Amending s. 348.0008, F.S.; deletes a cross reference.

Section 7: Amending s. 933.02, F.S.; amending a cross reference.

Section 8: Amending s. 933.40, F.S.; deletes a cross reference.

Section 9: Amending s. 11.062, F.S.; permits the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used.

Section 10: Providing an effective date of on upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to researchers at the University of Florida, the estimated cost to produce citrus trees in protective structures with proper sanitation requirements will cost an additional $2 per tree. The commercial citrus industry normally uses about 3 million trees a year so the estimated fiscal impact on the private sector would be approximately $6 million per year. However if citrus trees are not produced in protective structures, there will be a great risk of these trees being infected with citrus greening. If this occurs, the new trees will die before they reach production size. The fiscal impact if only 30 percent of trees grown without protective structures were infected would be $9 million due to loss of trees alone. Over time, the law will have a positive fiscal impact on the private sector.

D. FISCAL COMMENTS:

The bill provides authorization to use existing funds to relocate the Citrus Budwood facilities for protection against citrus diseases. The House General Appropriations Act, HB 5001, provides an appropriation for this effort.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties of municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority relating to conditions under which citrus nursery stock may be propagated, grown, sold or moved and the specifications for the approved site and protective structure.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted the following three amendments:

- Conforming the designation of successor programs to qualify as agricultural lands for assessment purposes.
- Clarifying that compensation is subject to specific appropriation in FY 2006-07 or prior years, and establishing a repeal date of this section of statute.

- Removing the appropriation and permitting the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used.

This analysis is drawn to the bill as amended.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agriculture; amending s. 193.461, F.S.; revising criteria for agricultural lands taken out of production by any state or federal eradication or quarantine program; amending s. 581.184, F.S; requiring the Department of Agriculture and Consumer Services to implement a citrus health plan for certain purposes; eliminating the authority of the department to remove and destroy certain citrus trees; deleting definitions and provisions relating to immediate final orders, notice to property owners, rulemaking authority, and the posting of certain orders, to conform; requiring certain law enforcement officers to maintain order under certain circumstances involving the citrus canker disease management process; creating s. 581.1843, F.S.; making it unlawful to propagate certain citrus nursery stock on or after January 1, 2007, at sites and under certain conditions not approved by the department; providing

exceptions; providing rulemaking authority; specifying regulation of certain varieties of citrus plants; providing exceptions; requiring the department to establish certain regulated areas around commercial citrus nurseries; providing exceptions; providing for notice to property owners by immediate final order prior to removal of certain citrus trees; providing an appeal process for an immediate final order; providing for preemption to the state to regulate the removal and destruction of certain citrus plants; requiring the department to relocate certain trees to certain locations; amending s. 581.1845, F.S.; requiring certain compensation claims to be filed by December 31, 2007; providing for the expiration of compensation claims not filed prior to January 1, 2008; providing for payment of claims by specified funding; providing for future repeal; amending ss. 120.80, 348.0008, 933.02, and 933.40, F.S.; deleting provisions and cross-references, to conform; amending s. 11.062, F.S; providing an exception to the prohibition against the use of state funds by certain state agencies to employ lobbyists under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.--

(7) Lands classified for assessment purposes as agricultural lands which are taken out of production by any state or federal eradication or quarantine program shall continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow, or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of no more than $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under the provisions of s. 193.011.

Section 2. Section 581.184, Florida Statutes, is amended to read:

581.184 Adoption of rules; citrus disease management ~~canker eradication; voluntary destruction agreements~~.--

(1) The department shall adopt by rule, pursuant to ss. 120.536(1) and 120.54, and implement a comprehensive citrus health plan to minimize the impact of exotic citrus pests and diseases to citrus production and to allow for the orderly marketing of citrus fruit in other states and countries. ~~As used in this section, the term:~~

~~(a) "Infected or infested" means citrus trees harboring the citrus canker bacteria and exhibiting visible symptoms of the disease.~~

~~(b) "Exposed to infection" means citrus trees located within 1,900 feet of an infected tree.~~

~~(2)(a) The department shall remove and destroy all infected citrus trees and all citrus trees exposed to infection. The department may destroy, by chipping, trees removed pursuant to this section. Notice of the removal of such trees, by immediate final order, shall be provided to the owner of the property on which such trees are located. An immediate final order issued by the department pursuant to this section shall notify the property owner that the citrus trees that are the subject of the immediate final order will be removed and destroyed unless the property owner, no later than 10 days after delivery of the immediate final order pursuant to subsection (3), requests and obtains a stay of the immediate final order from the district court of appeal with jurisdiction to review such requests. The property owner shall not be required to seek a stay of the immediate final order by the department prior to seeking the stay from the district court of appeal.~~

(2)~~(b)~~ Regulation of the removal or destruction of citrus trees pursuant to this section is hereby preempted to the state. No county, municipal, or other local ordinance or other regulation that would otherwise impose requirements, restrictions, or conditions upon the department or its contractors with respect to the removal or destruction of citrus

trees pursuant to this section shall be enforceable against the department or its contractors.

~~(3) Any immediate final order issued by the department pursuant to this section:~~

~~(a) May be delivered in person, by certified mail, or by attaching the order to a conspicuous place on the property on which a citrus tree to be removed is located.~~

~~(b) Is not required to be adopted by the department as a rule.~~

~~(4) Simultaneously with the delivery of an immediate final order, the department shall also provide the following information to a property owner:~~

~~(a) The physical location of the infected tree which has necessitated removal and destruction of the property owner's tree.~~

~~(b) The diagnostic report that resulted in the determination that the infected tree is infected with the citrus canker.~~

(3) ~~(5)~~ The department shall ~~is directed to~~ adopt rules, pursuant to ss. 120.536(1) and 120.54, regarding the conditions under which citrus plants~~, other than those that are infected or exposed to infection,~~ can be grown, moved, and planted in this state as may be necessary for the ~~eradication,~~ control~~,~~ or prevention of the dissemination of citrus diseases ~~canker~~. Such rules shall be in effect for any period during which, in the judgment of the Commissioner of Agriculture, there is the threat of the spread of citrus diseases ~~canker disease~~ in the state. ~~Such rules may provide for the conduct of any activity regulated~~

~~by such rules subject to an agreement by persons wishing to engage in such activity to voluntarily destroy, at their own expense, citrus plants declared by the department to be imminently dangerous by reason of being infected or infested with citrus canker or exposed to infection and likely to communicate same. The terms of such agreement may also require the destruction of healthy plants under specified conditions. Any such destruction shall be done after reasonable notice in a manner pursuant to and under conditions set forth in the agreement. Such agreements may include releases and waivers of liability and may require the agreement of other persons.~~

(4) ~~(6)~~ The department shall develop by rule, pursuant to ss. 120.536(1) and 120.54, a statewide program of decontamination to prevent and limit the spread of citrus canker disease. Such program shall address the application of decontamination procedures and practices to all citrus plants and plant products, vehicles, equipment, machinery, tools, objects, and persons who could in any way spread or aid in the spreading of citrus canker in this state. In order to prevent contamination of soil and water, such rules shall be developed in consultation with the Department of Environmental Protection. The department may develop compliance and other agreements which it determines can aid in the carrying out of the purposes of this section, and enter into such agreements with any person or entity.

(5) ~~(7)~~ Owners or ~~and/or~~ operators of nonproduction vehicles and equipment shall follow the department guidelines for citrus canker decontamination effective June 15, 2000. ~~The~~

~~department shall publish the guidelines in the Florida Administrative Weekly and on the department Internet website. The guidelines shall be posted no later than May 15, 2000.~~

(6) ~~(8)~~ Notwithstanding any provision of law, the Department of Environmental Protection is not authorized to institute proceedings against any person under the provisions of s. 376.307(5) to recover any costs or damages associated with contamination of soil or water, or the evaluation, assessment, or remediation of contamination of soil or water, including sampling, analysis, and restoration of soil or potable water supplies, where the contamination of soil or water is determined to be the result of a program of decontamination to prevent and limit the spread of citrus canker disease pursuant to rules developed under this section. This subsection does not limit regulatory authority under a federally delegated or approved program.

(7) ~~(9)~~ Upon request of the department, the sheriff or chief law enforcement officer of each county in the state shall provide assistance in obtaining access to private property for the purpose of enforcing the provisions of this section. The sheriff or chief law enforcement officer shall be responsible for maintaining public order during the citrus disease management ~~eradication~~ process and protecting the safety of department employees, representatives, and agents charged with implementing and enforcing the provisions of this section. The department may reimburse the sheriff or chief law enforcement officer for the reasonable costs of implementing the provisions of this subsection.

~~(10) Posting of an order on the property on which citrus trees are to be cut pursuant to the citrus canker eradication program shall meet the notice requirement of s. 120.569(1).~~

Section 3. Section 581.1843, Florida Statutes, is created to read:

581.1843 Citrus nursery stock propagation and production and the establishment of regulated areas around citrus nurseries.--

(1) As used in this section the term "commercial citrus grove" means a solid set planting of 40 or more citrus trees.

(2) Effective January 1, 2007, it is unlawful for any person to propagate for sale or movement any citrus nursery stock that was not propagated or grown on a site and within a protective structure approved by the department and that is not at least 1 mile away from commercial citrus groves. A citrus nursery registered with the department prior to April 1, 2006, shall not be required to comply with the 1-mile setback from commercial citrus groves while continuously operating at the same location for which it was registered. However, the nursery shall be required to propagate citrus within a protective structure approved by the department. Effective January 1, 2008, it shall be unlawful to distribute any citrus nursery stock that was not produced in a protective structure approved by the department.

(3) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that set forth the conditions under which citrus nursery stock can be propagated, grown, sold, or moved

and the specifications for the approved site and protective structure.

(4) Under the provisions of this chapter, the department shall adopt rules that are consistent with scientific findings and recommendations of the Citrus Budwood Technical Advisory Committee to regulate all genera of the Rutaceous subfamilies Aurantioideae, Rutoideae, and Toddalioideae that pose a threat of introducing or spreading a citrus plant pest.

(5) The department shall establish regulated areas around the perimeter of commercial citrus nurseries that were established on sites after April 1, 2006, not to exceed a radius of 1 mile. The planting of citrus in an established regulated area is prohibited. The planting of citrus within a 1-mile radius of commercial citrus nurseries that were established on sites prior to April 1, 2006, must be approved by the department. Citrus plants planted within a regulated area prior to the establishment of the regulated area may remain in the regulated area unless the department determines the citrus plants to be infected or infested with citrus canker or citrus greening. The department shall require the removal of infected or infested citrus, nonapproved planted citrus, and citrus that has sprouted by natural means in regulated areas. The property owner shall be responsible for the removal of citrus planted without proper approval. Notice of the removal of citrus trees, by immediate final order of the department, shall be provided to the owner of the property on which the trees are located. An immediate final order issued by the department under this section shall notify the property owner that the citrus trees,

which are the subject of the immediate final order, must be removed and destroyed unless the property owner, no later than 10 days after delivery of the immediate final order, requests and obtains a stay of the immediate final order from the district court of appeal with jurisdiction to review such requests. The property owner shall not be required to seek a stay from the department of the immediate final order prior to seeking a stay from the district court of appeal.

(6) Regulation of the removal or destruction of citrus plants under this section is preempted to the state. No county, municipal, or other local ordinance or other regulation that would otherwise impose requirements, restrictions, or conditions upon the department or its contractors with respect to the removal or destruction of citrus trees under this section shall be enforceable against the department or its contractors.

(7) The department shall relocate foundation source trees maintained by the Division of Plant Industry from various locations, including those in Dundee and Winter Haven, to protective structures at the Division of Forestry nursery in Chiefland or to other protective sites located a minimum of 10 miles from any commercial citrus grove. The department is authorized to expend existing funds from its Contracts and Grants Trust Fund for this purpose.

Section 4. Subsection (1) of section 581.1845, Florida Statutes, is amended, and subsections (6) and (7) are added to that section, to read:

581.1845 Citrus canker eradication; compensation to homeowners whose trees have been removed.--

(1) The Department of Agriculture and Consumer Services shall provide compensation to eligible homeowners whose citrus trees have been removed under a citrus canker eradication program. Funds to pay this compensation may be derived from both state and federal matching sources and shall be specifically appropriated by law. Eligible homeowners shall be compensated subject to the availability of ~~appropriated~~ funds specifically appropriated in fiscal year 2006-2007 or prior fiscal years for that purpose.

(6) Any claim for compensation under this section or under the Shade Dade or Shade Florida programs must be filed with the department no later than December 31, 2007. Effective January 1, 2008, all unfiled claims shall expire.

(7) This section expires July 1, 2008.

Section 5. Paragraph (c) of subsection (2) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.--

(2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--

~~(c) The provisions of ss. 120.54 and 120.56 shall not apply to any statement or action by the department in furtherance of its duties pursuant to s. 581.184(2).~~

Section 6. Subsection (2) of section 348.0008, Florida Statutes, is amended to read:

348.0008 Acquisition of lands and property.--

(2) An authority and its authorized agents, contractors, and employees are authorized to enter upon any lands, waters, and premises, upon giving reasonable notice to the landowner, for the purpose of making surveys, soundings, drillings,

appraisals, environmental assessments including phase I and phase II environmental surveys, archaeological assessments, and such other examinations as are necessary for the acquisition of private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings or as are necessary for the authority to perform its duties and functions; and any such entry shall not be deemed a trespass or an entry that would constitute a taking in an eminent domain proceeding. An expressway authority shall make reimbursement for any actual damage to such lands, water, and premises as a result of such activities. Any entry authorized by this subsection shall be in compliance with the premises protections and landowner liability provisions contained in s. ~~ss.~~ 472.029 ~~and 581.184~~.

Section 7. Section 933.02, Florida Statutes, is amended to read:

933.02 Grounds for issuance of search warrant.--Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law;

(2) When any property shall have been used:

(a) As a means to commit any crime;~~,~~

(b) In connection with gambling, gambling implements and appliances;~~,~~ or

(c) In violation of s. 847.011 or other laws in reference to obscene prints and literature;

(3) When any property constitutes evidence relevant to proving that a felony has been committed;

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;~~, or~~

(b) In violation of the fish and game laws;~~, or~~

(c) In violation of the laws relative to food and drug;~~,~~ or

(d) In violation of the laws relative to citrus disease ~~a quarantine for citrus canker~~ pursuant to ss. ~~s.~~ 581.184 and 581.1845~~, or~~

~~(e) Which may be inspected, treated, seized, or destroyed pursuant to s. 581.184~~; or

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 8. Paragraph (f) of subsection (1) and paragraph (b) of subsection (3) of section 933.40, Florida Statutes, are amended to read:

933.40 Agriculture warrants.--

(1) As used in this section:

(f) "Plant pest" means any plant pest, noxious weed, or arthropod declared a nuisance by the department pursuant to s.

581.031(6)~~, or any plant infected or exposed to infection as defined in s. 581.184(1)~~.

(3) An agriculture warrant shall be issued only upon probable cause. In determining the existence of probable cause for the issuance of one or more agriculture warrants, one or more of the following findings may be sufficient to support a determination of probable cause:

(b) Under all of the circumstances set forth in the affidavit, there is a fair probability the property subject to the agriculture warrant:

1. Contains a plant pest;

2. Is located in an area which may reasonably be suspected of being infested or infected with a plant pest due to its proximity to a known infestation, or if it is reasonably exposed to infestation;

~~3. Is located in a Section in which the department has diagnosed the presence of one or more plants infected with citrus canker as defined in s. 581.184(1)(a) or is located in a Section adjacent thereto;~~

3.~~4.~~ Contains animals affected with any animal pest or which have been exposed to and are liable to spread the animal pest; or

4.~~5.~~ Contains any other property that is liable to convey an animal pest.

Section 9. Subsection (3) is added to section 11.062, Florida Statutes, to read:

11.062 Use of state funds for lobbying prohibited; penalty.--

(3) Notwithstanding any other provision of law, the prohibitions contained in this section shall not apply to a state agency established under s. 20.29, provided that no general revenue funds are expended for lobbying purposes.

Section 10. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7159 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Mayfield offered the following:

Amendment (with title amendment)

Remove lines 380-387

========== T I T L E A M E N D M E N T ==========

Remove lines 41-44 and insert:

and cross-references, to conform; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7163 CS PCB ENVR 06-07 Wetland Mitigation
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	7 Y, 0 N	Kliner	Kliner
1) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Dixon	Dixon
2) State Resources Council		Kliner	Hamby
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides a phased approach for implementation of environmental resource permitting (ERP) in Northwest Florida (NWF) that requires the Department of Environmental Protection (DEP) and the Northwest Florida Water Management District (NWFWMD) to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for

- Stormwater management by January 1, 2007, and
- Management and Storage of Surface Waters, by July 1, 2008

Rules shall:

1. Update the stormwater rules to improve water quality and protection, and to apply the least restrictive measures and criteria adopted by other WMDs.
2. Minimally encroach upon property interests and to fashion permitting thresholds and requirements for the management and storage of surface waters to reflect the historically rural nature of the district.
3. Adopt the existing exemptions and general permits adopted by the DEP and the other WMDs, and provide that any activity or structure that is exempt in any other WMD will be exempt in the NWFWMD. Furthermore, the rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

The bill requires the DEP and the NWFWMD to enter into an operating management agreement that delegates to the water management district (WMD) the responsibility for managing ERP in NWF to the extent "resources allow" including, at a minimum, the responsibility for regulating silviculture and agriculture.

The bill prohibits a local government from adopting or enforcing an ordinance or policy that prohibits or restricts mitigation that offsets construction impacts pursuant to Part IV of Chapter 373, F.S. The bill also prohibits a local government in the NWFWMD to adopt or enforce a wetland regulatory program or criteria that is more stringent or duplicative of the ERP program once it is enacted.

If there is no appropriation to fund the program in any given fiscal year, the bill provides that law governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with the act. The bill appropriates the sum of $2,740,000 for the 2006-07 fiscal year from the General Revenue Fund to the DEP for the operational expenditures of the NWFWMD to implement this act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires the DEP and the NWFWMD to jointly execute rules for environmental resource permitting and to enter into a management agreement that delegates to the WMD the responsibilities for managing ERP in NWF to the extent "resources allow" including, "at a minimum, the responsibility for regulating silviculture and agriculture."

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The ERP program was created in 1993 when the former Department of Natural Resources and the former Department of Environmental Regulation were merged to create the DEP. The program provided a streamlined, but still comprehensive, permitting process by combining the state's dredge and fill permit with the "management and storage of surface waters" (MSSW) permit that was being issued by the water management districts. ERP goals include preventing new construction from adversely impacting the flow and storage of surface waters, and therefore protecting existing homes and structures; reducing stormwater pollution; and protecting wetlands.

The ERP program is implemented by four of the five water management districts in the state through operating agreements with DEP. However, in the NFWMD, the DEP administers an interim environmental permitting program, called the Wetlands Resource Permitting program, which is limited to wetland permitting rules in effect in 1984.

In 1993, the Legislature decided not to extend the ERP program to the NFWMD because the District didn't have the funding to fully implement it, and because the Panhandle area was projected to grow much slower than the rest of the state. (The Northwest Florida Water Management District's ad valorem millage rate is constitutionally and statutorily capped at .05 mills, which is less than one-tenth of what the other four water management districts can levy.)

Pursuant to s. 373.4145, F.S, the NFWMD is exempt from the ERP. Under this regulatory framework, the DEP processes "wetlands resource permits" for many wetlands activities within the area of the NFWMD. Currently, the area of the NFWMD is exempted from the environmental resource permitting (ERP) program by s. 373.4145, F.S., as amended, until July 1, 2010.

Under the existing authority in NWF, the DEP administers dredge and fill and stormwater programs for all non-agricultural projects under rules adopted prior to creation of the ERP program. The dredge and fill program regulates activities in most natural waterbodies and connected wetlands using boundaries determined by the 1994 unified statewide wetland delineation methodology. However, the dredge and fill program does not regulate activities in isolated wetlands.

The NWFWMD administers a limited MSSW program for non-agricultural facilities, primarily the construction or alteration of dams and levees, and an agricultural MSSW program. The agricultural program regulates, to a limited extent, surface water management projects in agricultural settings, including isolated wetlands.

The implementation of a full ERP program in the NWFWMD will result in changes to the current environmental regulatory programs in two areas: (1) stormwater (water quality and water quantity) and (2) isolated wetlands.

DEP has prepared a proposed rule -- Rule 62-346 -- in anticipation of the implementation of ERP in NWFWMD. If Rule 62-346 were implemented as drafted, the following changes would result in each of these areas:

Stormwater

- Water Quality - DEP's stormwater program in the NWFWMD currently regulates activities in uplands and wetlands that create new impervious areas (under Rule 17-25) and only addresses stormwater water quality and not the increased quantity of stormwater (i.e. flooding) generated by development projects.
- Water Quantity – NWFWMD administers a limited MSSW program for non-agricultural facilities, primarily the construction or alteration of dams and levees, and an agricultural MSSW program. The agricultural program regulates, to a limited extent, surface water management projects in agricultural settings, including isolated wetlands. The MSSW program is designed to address issues relating to water flow and flooding.
- Under the ERP program, stormwater quality and quantity would be addressed in a single environmental resource permit issued by the NWFWMD.

Isolated wetlands

- Currently, impacts to isolated wetlands are regulated by the NWFWMD only to a limited degree with regard to water flow and water quantity issues (i.e. under the NWFWMD MSSW program). They are not regulated by any state agency with regard to their habitat value.
- Under the ERP program, isolated wetlands would be regulated with regard to their habitat value.
- Under the ERP program, no distinction would be made between "isolated wetlands" and "wetlands" that are contiguous to a water body (i.e. creek, river, lake, bay, etc.). Therefore, all wetlands would be regulated regardless of whether they are isolated.
- As drafted, Rule 62-346 defines "wetlands" basically as any area that is wet enough under normal conditions to support wetland vegetation.
- The Proposed Rule exempts certain activities from regulation. Included in the exemptions are activities associated with typical agricultural practices that alter the topography of the land. However, the exemption does not apply if the alteration is "for the sole or predominant purpose of impounding or obstructing surface waters." Therefore, any activity that alters agricultural land for the purpose of filling a wetland (i.e. obstructing a wetland) would not qualify for the exemption.
- The Proposed Rule allows certain activities to be conducted under "noticed general permits." Included in those activities is "the dredging or filling of less than 100 square feet of wetlands or other surface waters." Such an activity may be undertaken after notice is provided to the NWFWMD of the landowner's intent to pursue the activity. Therefore, the filling of an isolated wetland where the wetland is less than 100 square feet in surface area could be filled through the "noticed general permit."
- Under the Proposed Rule, the filling of an isolated wetland greater than 100 square feet would require an individual permit, and the permit application would be reviewed pursuant to all the criteria listed in Proposed Rules 62-346.301 and 62-346.302 (including criteria relating to the protection of habitat for fish and wildlife) and pursuant to the requirements to modify the project to eliminate or reduce adverse impacts and to mitigate for such impacts.
- If the wetland is a "pond" that is wholly-owned and was entirely constructed in uplands, then the review of the application would be limited to the impacts of the filling on water quality and water quantity (i.e. not subject to review of impacts to fish and wildlife habitat), unless the pond provides significant habitat for threatened or endangered species.

Effect of Proposed Changes

The bill provides a phased approach for implementation of ERP in NW Florida. It requires the DEP and the NWFWMD to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for

- Stormwater management by January 1, 2007, and
- MSSW, by July 1, 2008.

In drafting the rules, the bill directs the DEP and the NWFWMD to:

- Update the stormwater rules to improve water quality and protection, and to apply the least restrictive measures and criteria adopted by other WMDs.
- Minimally encroach upon property interests and to fashion permitting thresholds and requirements for the management and storage of surface waters to reflect the historically rural nature of the district.
- Adopt the existing exemptions and general permits adopted by the DEP and the other WMDs, and provide that any activity or structure that is exempt in any other WMD will be exempt in the NWFWMD. Furthermore, the rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

The bill requires the DEP and the NWFWMD to enter into an operating management agreement that delegates to the WMD the responsibilities for managing ERP in NWF to the extent "resources allow" including, "at a minimum, the responsibility for regulating silviculture and agriculture."

The bill grandfathers:

- Any legal activity existing before the new programs rules take effect, as long as those activities abide by the condition of their original authorization.
- Activities that have been permitted under the old NW Florida rules but not yet begun construction or operation. Activities include those that are proposed in applications prior to the implementation of the new rules. These projects may be amended if the modification "lessens the environmental impact" however; the modifications may not extend the time limit for construction by more than two years.

The bill provides statutory exemptions common to the other four WMDs, excluding exemption from the Harris Act and deletes statutory exemptions for the NWFWMD from the ERP.

The bill amends s. 373.414, F.S., to limit, on a state-wide basis, local government's ability to regulate local activities that affect surface waters or wetlands, as well as restrict what local governments within the NWFWMD may regulate. Section 373.414, F.S., which addresses additional criteria for activities in surface waters and wetlands, contemplates mitigation measures to offset adverse effects that may be caused by regulated activity (i.e., construction in wetlands). The amendment to this section prohibits:

- A local government from adopting or enforcing an ordinance or policy that prohibits or restricts mitigation that offsets construction impacts pursuant to Part IV of Chapter 373. The amendment also requires that a local government ordinance that regulates construction in wetlands to consider measures "proposed by or acceptable to the applicant" to mitigate adverse effects.
- A local government in the NWFWMD from adopting or enforcing a wetland regulatory program or criteria that is more stringent or duplicative of the ERP program once it is enacted.[1]

[1] This language appears to conflict with s. 373.441(1), F.S., contemplating delegation of ERP provisions to local governments, subject to the local governments' financial, technical, and administrative capability. Specifically, s. 373.441(1)(b) allows a locally delegated permit program to have stricter standards than state standards. In addition, the prohibition against a duplicative local government program may be unnecessary as s. 373.441(1)(c) contemplates reconciling duplicative permitting.

The bill also provides that the regulations governing development activity in Northwest Florida shall revert back to those in effect on April 1, 2006 if the Legislature fails to appropriate funds to implement this program in any given fiscal year.

Generally, the bill provides flexibility in the rulemaking process by requiring the DEP and the NWFWMD to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area." Flexibility is achieved in the language mandating the operating management agreement by delegating responsibility to the WMD as "resources allow." The bill appropriates the sum of $2,740,000 for the 2006-07 fiscal year from the General Revenue Fund to the Department of Environmental Protection for the operational expenditures of the NWFWMD to implement this act. If resources do not allow the WMD to assume the delegated responsibilities under the operating management agreement, the bill provides the regulations governing development activity in Northwest Florida shall revert to those in effect on April 1, 2006 until such time as funding and staffing levels are restored consistent with the act.

C. SECTION DIRECTORY:

Section 1. Amends paragraph (b) of subsection (1) of s. 373.414, F.S., limiting on a state-wide basis, local government's ability to regulate local activities that affect surface waters or wetlands, as well as restricting what local governments within the NWFWMD may regulate.

Section 2. Amends s. 373.4145, F.S., providing the mechanism for implementing ERP in NWF.

Section 3. Provides an appropriation.

Section 4. Repeals section 4 of chapter 2005-273, Laws of Florida, and section 32 of chapter 2005-71, Laws of Florida.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:	FY 06-07	FY 07-08	FY 08-09
General Revenue	($2.74 million)	($1.72 million)	($1.72 million)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY:

In drafting the rules, the bill directs the DEP and the NWFWMD to:

- Update the stormwater rules to improve water quality and protection, and to apply the least restrictive measures and criteria adopted by other WMDs.
- Minimally encroach upon property interests and to fashion permitting thresholds and requirements for the management and storage of surface waters to reflect the historically rural nature of the district.
- Adopt the existing exemptions and general permits adopted by the DEP and the other WMDs, and provide that any activity or structure that is exempt in any other WMD will be exempt in the NWFWMD. Furthermore, the rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted one amendment changing the appropriation from the Water Management Lands Trust Fund to the General Revenue Fund.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7163**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Evers offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 373.4145, Florida Statutes, is reenacted and amended to read:

373.4145 ~~Interim~~ Part IV permitting program within the geographical jurisdiction of ~~for~~ the Northwest Florida Water Management District.--

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, taking into consideration the differing physical and natural characteristics of the area, the department and the district shall ~~the permitting authority of the department under this part shall consist solely of the following, notwithstanding the rule adoption deadline in s. 373.414(9)~~:

(a) Jointly develop rules to regulate the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1,

2007; the district may implement the rules without adoption pursuant to s. 120.54. Until the stormwater management system rules take effect, chapter 62-25 ~~17-25~~, Florida Administrative Code, shall remain in full force and effect~~,~~ and shall be implemented by the department. Notwithstanding the provisions of this section, chapter 62-25 ~~17-25~~, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds. The intent of the rules created under this paragraph is to update existing stormwater rules, to improve water quality and flood protection, and to apply the least restrictive measures and criteria adopted in other water management district rules.

(b) Jointly develop rules for the management and storage of surface waters under this part. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1, 2008; the district may implement the rules without adoption pursuant to s. 120.54. Until the rules for the management and storage of surface waters under this part take effect, rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect~~,~~ and shall be implemented by the department. However, the department is authorized to establish additional exemptions and general permits for dredging and filling, if such exemptions or general permits do not allow significant adverse impacts to occur individually or cumulatively. However, for the purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 62-

312.030(2) ~~17 312.030(2)~~, Florida Administrative Code, shall be determined in accordance with the methodology in rules 62-340.100 through 62-340.600 ~~17 340.100 through 17 340.600~~, Florida Administrative Code~~, as ratified in s. 373.4211, upon the effective date of such ratified methodology~~. In implementing s. 373.421(2), the department shall determine the extent of those surface waters and wetlands within the regulatory authority of the department as described in this paragraph. At the request of the petitioner, the department shall also determine the extent of surface waters and wetlands that ~~which~~ can be delineated by the methodology ratified in s. 373.4211, but that ~~which~~ are not subject to the regulatory authority of the department as described in this paragraph. The intent of the rules created under this paragraph is to improve the management and storage of surface waters with minimal impact on property interests and to consider the rural nature, current development trends, and abundant natural resources of the district relative to the permitting thresholds and requirements.

(c) Pursue streamlining of the federal and state wetland permitting programs pursuant to ss. 373.4143 and 373.4144.

(d) Implement, to the maximum extent possible, streamlining measures, including electronic permitting, field permitting, and certification programs for activities with minimal individual or cumulative impact, informal wetland determinations, and other similar measures.

(2) ~~(c)~~ The department may implement chapter 40A-4, Florida Administrative Code, in effect prior to July 1, 1994, pursuant to an interagency agreement with the Northwest Florida Water Management District adopted under s. 373.046(4).

(3) The rules adopted under subsection (1), as applicable, shall:

(a) Incorporate the exemptions in ss. 373.406 and 403.813(2).

(b) Incorporate the provisions of rule 62-341.475(1)(f), Florida Administrative Code, applicable to single-family homes located entirely or partially within wholly owned, isolated wetlands.

(c) Exempt from the notice and permitting requirements of this part the construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that:

1. Is not part of a larger common plan of development or sale proposed by the applicant.

2. Does not involve wetlands or other surface waters.

(d) Incorporate the exemptions and general permits that are effective under this part, which have been enacted by rule by the department and other water management districts, including the general permits authorized by s. 403.814.

(e) Provide an exemption for the repair, stabilization, or paving of county maintained roads, existing on or before January 1, 2002, and the repair or replacement of bridges that are part of the roadway consistent with the provisions of s. 403.813(2)(t), notwithstanding the provisions of s. 403.813(2)(t)7. requiring adoption of a general permit applicable within the Northwest Florida water Management District and the repeal of said exemption upon adoption of said general permit.

(f) Exempt from rule criteria under subsection (1)(b) an alteration of a wholly owned, artificial surface water created entirely from uplands that does not connect to surface waters of the state, except for those created for the purpose of providing mitigation under this part.

~~(2) The authority of the Northwest Florida Water Management District to implement this part or to implement any authority pursuant to delegation by the department shall not be affected by this section. The rule adoption deadline in s. 373.414(9) shall not apply to said district.~~

(4) ~~(3)~~ The department and the ~~division of permitting responsibilities in s. 373.046(4) shall not apply within the geographical jurisdiction of the~~ Northwest Florida Water Management District shall enter into an operating agreement under s. 373.046 to effectively implement this section and provide the district with the amount of responsibility under the agreement that resources allow, including, at a minimum, the responsibility for regulating silviculture and agriculture. The operating agreement shall encourage local delegation of the responsibilities under this section pursuant to s. 373.441.

(5) The provisions of s. 373.414(11)-(14) shall not apply to rules adopted under this section.

(6) The following activities shall continue to be governed by the provisions of s. 373.4145, Florida Statutes 1994:

(a) The operation and routine custodial maintenance of activities legally in existence before the effective date of the rules adopted under subsection (1), as long as the terms and conditions of the permit, exemption, or other authorization for such activities continue to be met.

(b) The activities approved in a permit issued pursuant to s. 373.4145, Florida Statutes 1994, and the review of activities proposed in applications received and completed before the effective date of the rules adopted under subsection (1), as applicable. This paragraph shall also apply to any modification of the plans, terms, and conditions of a permit issued pursuant to s. 373.4145, Florida Statutes 1994, that lessens the

environmental impact, except that any such modification shall not extend the time limit for construction beyond 2 additional years.

This subsection shall not apply to any activity that is altered, modified, expanded, abandoned, or removed after adoption of the applicable rules under subsection (1).

(7) Unless the petitioner elects to apply rule 62-340, Florida Administrative Code, to all wetlands, the delineation of the landward extent of wetlands and other surface waters for petitions filed under s. 373.421(2) prior to the effective date of the rules adopted under paragraph (1)(b) shall continue to be determined in accordance with rule 62-312.030(2), Florida Administrative Code, in effect July 1, 1994, and rules 62-340.100 through 62-340.600, Florida Administrative Code, as ratified in s. 373.4211.

~~(4) If the United States Environmental Protection Agency approves an assumption of the federal program to regulate the discharge of dredged or fill material by the department or the water management districts, or both, pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.; the United States Army Corps of Engineers issues one or more state programmatic general permits under the referenced statutes; or the United States Environmental Protection Agency or the United States Corps of Engineers approves any other delegation of regulatory authority under the referenced statutes, then the department may implement any permitting authority granted in this part within the Northwest Florida Water Management District which is prescribed as a condition of granting such assumption, general permit, or delegation.~~

(8) ~~(5)~~ Within the geographical jurisdiction of the Northwest Florida Water Management District, the methodology for determining the landward extent of surface waters of the state under chapter 403 in effect prior to the effective date of the methodology ratified in s. 373.4211 shall apply to:

(a) Activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or that ~~which~~ were exempted from regulation under such rules, prior to July 1, 1994, and that ~~which~~ were permitted under chapter 62-25 ~~17-25~~, Florida Administrative Code, or exempt from chapter 62-25 ~~17-25~~, Florida Administrative Code, prior to July 1, 1994, provided:

1. An activity authorized by such permits is conducted in accordance with the plans, terms, and conditions of such permits.

2. An activity exempted from the permitting requirements of the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or chapter 62-25 ~~17-25~~, Florida Administrative Code, is:

a. Commenced prior to July 1, 1994, and completed by July 1, 1999;

b. Conducted in accordance with a plan depicting the activity that ~~which~~ has been submitted to and approved for construction by the department, the appropriate local government, the United States Army Corps of Engineers, or the Northwest Florida Water Management District; and

c. Conducted in accordance with the terms of the exemption.

(b) An activity within the boundaries of a valid jurisdictional declaratory statement issued pursuant to s. 403.914, 1984 Supplement to the Florida Statutes 1983, as

amended, or the rules adopted thereunder, in response to a petition received prior to June 1, 1994.

(c) Any modification of a permitted or exempt activity as described in paragraph (a) that ~~which~~ does not constitute a substantial modification or that ~~which~~ lessens the environmental impact of such permitted or exempt activity. For the purposes of this section, a substantial modification is one that ~~which~~ is reasonably expected to lead to substantially different environmental impacts.

(d) Applications for activities permitted under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the 1983 Florida Statutes, as amended, that ~~which~~ were pending on June 15, 1994, unless the application elects to have applied the delineation methodology ratified in s. 373.4211.

(9) Subsections (2) and (8) are repealed on the effective date of the rules adopted under subsection (1).

(10) If the Legislature in any given fiscal year fails to fund and staff the environmental resource permitting program established under this section, the environmental resource permitting program shall be suspended for that fiscal year and the rules and statutes governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with this section.

~~(6) Subsections (1), (2), (3), and (4) shall be repealed effective July 1, 2006.~~

Section 2. On or before October 1, 2006, the Department of Environmental Protection shall enter into negotiations with any local government within the Northwest Florida Water Management District that requests to be delegated the responsibilities under this act pursuant to s. 373.441, Florida Statutes, in

order to minimize duplicative permitting programs and increase governmental efficiency while maintaining environmental standards. The department shall report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2007, regarding progress made in the negotiation of environmental permitting with any local government and delegation of responsibilities thereto in accordance with this section.

Section 3. The sum of $2,740,000 is appropriated from the General Revenue Fund to the Department of Environmental Protection for the 2006-2007 fiscal year for the operational expenditures of the Northwest Florida Water Management District pursuant to s. 373.4145, Florida Statutes, as amended by this act.

Section 4. Section 4 of chapter 2005-273, Laws of Florida, and section 32 of chapter 2005-71, Laws of Florida, are repealed.

Section 5. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to environmental permitting; reenacting and amending s. 373.4145, F.S.; requiring the Northwest Florida Water Management District and the Department of Environmental Protection to jointly develop rules for the regulation of certain activities related to stormwater management systems and the management and storage of surface waters; requiring the district and the department to streamline federal and state wetland permitting programs and to implement such measures; requiring certain

exemptions and provisions for rules relating to certain dwellings; requiring the department and district to incorporate certain exemptions and general permits in joint rules; exempting certain activities and structures from permitting requirements; requiring the department and the district to enter into an operating agreement for the implementation of certain provisions; requiring the district to be responsible for the regulation and local delegation of certain activities; providing for continuing operation of certain earlier law; repealing certain provisions upon the adoption of rules; providing effect for failure to fund in any given fiscal year; requiring the department to negotiate with local governments in the district for delegation of responsibility for certain permitting; requiring the department to report to the Legislature by a certain date; providing an appropriation for operational expenses of the district; repealing s. 4 of ch. 2005-273, Laws of Florida, and s. 32 of ch. 2005-71, Laws of Florida, which specified dates certain for the repeal of certain provisions relating to permitting in the district; providing an effective date.